

No. 26-_____

In the
Supreme Court of the United States

HAZEN HUNTER WINCKLER,
Petitioner,

v.

STATE OF SOUTH DAKOTA,
Respondent.

**On Petition for Writ of Certiorari to the
Supreme Court of South Dakota**

PETITION FOR WRIT OF CERTIORARI

Tucker J. Volesky
Counsel of Record
305 N. Kimball
Mitchell, SD 57301
(605) 996-5542
tucker.volesky@
tuckervoleskylaw.com
Counsel for Petitioner

QUESTION PRESENTED

Whether Lake Andes, South Dakota – located on Yankton Sioux allotted lands within the boundaries of the reservation created by the Treaty with the Yankton Sioux, April 19, 1858, 11 Stat. 743 – constitutes Indian country under 18 U.S.C. § 1151, such that the State of South Dakota lacked jurisdiction to prosecute Petitioner, an enrolled tribal member, for offenses occurring there, where the South Dakota Supreme Court’s holding that allotted lands lose Indian country status upon conveyance to non-Indian ownership conflicts with this Court’s precedents including *McGirt v. Oklahoma*, 591 U.S. 894 (2020), and *Solem v. Bartlett*, 465 U.S. 463 (1984), which established only Congress can divest Indian country status through clear and explicit statutory language.

PARTIES TO THE PROCEEDING

1. Petitioner: Hazen Hunter Winckler.
2. Respondent: State of South Dakota.

STATEMENT OF RELATED PROCEEDINGS

1. Supreme Court of the State of South Dakota, Appeal Nos. 31006 and 31007, *State v. Winckler*, 2026 S.D. 19, 33 N.W.3d 58 (March 11, 2026).
2. Circuit Court, First Judicial Circuit, Charles Mix County, South Dakota, underlying criminal matters referenced in the South Dakota Supreme Court's opinion.

TABLE OF CONTENTS

QUESTION PRESENTED.....1

PARTIES TO PROCEEDING.....2

STATEMENT OF RELATED PROCEEDINGS.....2

TABLE OF CONTENTS.....3

INDEX TO APPENDICES.....4-5

TABLE OF AUTHORITIES.....6-8

OPINION BELOW.....9

STATEMENT OF JURISDICTION.....9

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....9-10

STATEMENT OF THE CASE.....10-19

SUMMARY OF ARGUMENT.....20-21

REASONS FOR GRANTING THE PETITION.....22-37

I. THE SOUTH DAKOTA SUPREME COURT’S DECISION CONFLICTS WITH *McGIRTS* REQUIREMENT OF CLEAR CONGRESSIONAL INTENT TO DIVEST INDIAN COUNTRY STATUS.....22-26

II. THE INCREMENTAL DIMINISHMENT THEORY ADOPTED BELOW CREATES IMPERMISSIBLE CHECKERBOARD JURISDICTION AND CONFLICTS WITH FEDERAL CIRCUIT COURT PRECEDENT.....26-28

III. THE LAND QUALIFIES AS INDIAN COUNTRY UNDER ALTERNATIVE PROVISIONS OF 18 U.S.C. § 1151.....29-35

IV. THIS CASE PRESENTS AN IDEAL VEHICLE FOR SUPREME COURT REVIEW.....36-37

CONCLUSION.....37

INDEX TO APPENDICES

Appendix A:

- App. A-1 – South Dakota Supreme Court Judgment and Opinion in *State v. Winckler*, 2026 S.D. 19
- App. A-2 – South Dakota Circuit Court Memorandum Decision (Jurisdiction), *State v. Winckler*
- App. A-3 – Transcript of Motions Hearing on Motions to Dismiss regarding Jurisdiction, *State v. Winckler*, held before the State Circuit Court on September 11, 2024 (including parties’ stipulations)
- App. A-4 – South Dakota Supreme Court Opinion in *Bruguier v. Class*, 1999 S.D. 122, 599 N.W.2d 364

Appendix B:

- App. B-1 – Treaty of Apr. 19, 1858, 11 Stat. 743
- App. B-2 – Act of Aug. 15, 1894, ch. 290, 28 Stat. 286, 314-319
- App. B-3 – 25 C.F.R. § 21.21
- App. B-4 – 25 U.S.C. §§ 2 & 13
- App. B-5 – 34 U.S.C. §§ 20903 & 20911
- App. B-6 – 20 U.S.C. §§ 7701 et seq
- App. B-7 – 34 C.F.R. § 222, Subpart G
- App. B-8 – 25 U.S.C. §§ 1901 et seq
- App. B-9 – 25 C.F.R. § 23.01
- App. B-10 – YST, Title II, Rule 33
- App. B-11 – 25 U.S.C. § 177
- App. B-12 – 25 Stat. 676

Appendix C:

- App. C-1 – Affidavit of Tucker J. Volesky, filed in *State v. Winckler* with exhibits:
 - Exhibit 3, United States Trust Patent dated May 8, 1891, filed with the Register of Deeds in Charles Mix County on December 2, 1903
 - Exhibit 12, U.S. Department of Commerce, 2020 U.S. Census Tribal Tract Map: Yankton Reservation
 - Exhibit 13, U.S. Department of Interior, Indian Affairs webpage, Yankton Agency
 - Exhibit 16, Letter from Yankton Sioux Tribe Chairman to United States Department of Interior, enclosing Protocols for Consultation with the Yankton Sioux Tribe
 - Exhibit 17, Argus Leader article titled, “*State says no to Yankton Sioux Tribe’s ask for National Guard help with flooding;*” published Sept. 24, 2019
 - Exhibit 21, Application and Grant Agreement between U.S. Department of Transportation and the Yankton Sioux Tribe, March 2021
 - Exhibit 22, Yankton Sioux Tribe Comprehensive Economic Development Strategy, September 2022
 - Exhibit 23, South Dakota Searchlight article titled, “*Homicide investigation sparks rare level of state-tribal cooperation;*” published May 31, 2024
- App. C-2 – Affidavit of Chelsea Wenzel, filed in *State v. Winckler* with exhibits:
 - State’s Exhibit F, Andes Central School District#11-1, Indian Policies and Procedures (IPP) Impact Aid Program

Appendix D:

- App. D-1 – 2020 Census Tribal Tract Map: Yankton Reservation
- App. D-2 – 2020 Census Tribal Block Groups, Form G-600

TABLE OF AUTHORITIES

Cases:

<i>Alaska v. Native Village of Venetie Tribal Gov't</i> , 522 U.S. 520 (1998).....	29-32
<i>Bates v. Clark</i> , 95 U.S. 204 (1877).....	34-35
<i>Blatchford v. Gonzales</i> , 100 N.M. 333, 1983-NMSC-060.....	33
<i>Bruguier v. Class</i> , 1999 S.D. 122, 599 N.W.2d 364.....	12, 15-16, 24-28, 31, 36
<i>Buttz v. Northern Pacific Railroad</i> , 119 U.S. 55 (1886).....	33
<i>McGirt v. Oklahoma</i> , 591 U.S. 894 (2020).....	1, 20-24, 28, 35-36
<i>Michigan v. Bay Mills Indian Community</i> , 572 U.S. 782 (2014).....	23
<i>Oneida Nation v. Vill. of Hobart</i> , 968 F.3d 664 (7th Cir. 2020).....	27
<i>Papasan v. Allain</i> , 478 U.S. 265 (1986).....	16
<i>Perrin v. United States</i> , 232 U.S. 478 (1914).....	32
<i>Solem v. Bartlett</i> , 465 U.S. 463 (1984).....	1, 20, 22-23, 36
<i>South Dakota v. Yankton Sioux Tribe</i> , 522 U.S. 329 (1998).....	13-14, 22-24
<i>State v. Romero</i> , 2006-NMSC-039, 140 N.M. 299.....	31
<i>State v. Winckler</i> , 2026 S.D. 19, 33 N.W.3d 58.....	2, 9, 11-13, 25, 27-28, 31, 35
<i>United States v. Arrieta</i> , 436 F.3d 1246 (10th Cir. 2006).....	31
<i>United States v. Celestine</i> , 215 U.S. 278 (1909).....	23
<i>United States v. Sandoval</i> , 231 U.S. 28 (1913).....	34
<i>United States v. Santa Fe P. R. Co.</i> , 314 U.S. 339 (1941).....	34
<i>United States v. Shoshone Tribe of Indians</i> , 304 U.S. 111 (1938).....	33
<i>Yankton Sioux Tribe v. Gaffey</i> , 188 F.3d 1010 (8th Cir. 1999).....	27
<i>Yankton Sioux Tribe v. Podhradsky</i> , 606 F.3d 994 (8th Cir. 2010).....	14, 27

Constitutional Provisions:

U.S. Const. Art. I, § 8, Cl 3.....9
U.S. Const. Art. VI, Cl 2.....9-10

Treaties and Acts:

Treaty with the Yankton Sioux, Apr. 19, 1858, 11 Stat. 743
.....1, 10, 13-15, 17, 19-21, 24-25, 30-31, 33, 36
Act of Aug. 15, 1894, ch. 290, 28 Stat. 286, 314-319
.....10-11, 14-15, 17, 19-21, 23-25, 29-31, 33, 35-36

Statutes:

25 Stat. 676-677, § 4.....10, 33
18 U.S.C. § 1151.....1, 10-12, 20-21, 26, 28-29, 36-37
18 U.S.C. § 1151(a).....12, 21, 26-27
18 U.S.C. § 1151(b).....12, 21, 26, 29, 31-32
18 U.S.C. § 1151(c).....12, 21, 26, 32, 35
20 U.S.C. §§ 7701 et seq.....10, 18
25 U.S.C. §§ 2 & 13.....10, 17
25 U.S.C. § 177.....10, 33
25 U.S.C. §§ 1901 et seq.....10, 19
25 U.S.C. §§ 1951-1952.....19
25 U.S.C. §§ 2801 et seq.....17
28 U.S.C. § 1257(a).....9
34 U.S.C. §§ 20901 et seq.....10, 18

34 U.S.C. § 20903.....18

34 U.S.C. § 20911.....18

Regulations:

25 C.F.R. § 12.21.....10, 11

25 C.F.R. § 23.101.....10, 19

34 C.F.R. § 222.....10, 18

OPINIONS BELOW

The judgment and opinion of the Supreme Court of the State of South Dakota in *State v. Winckler* is reported at 2026 S.D. 19, 33 N.W.3d 58, and contained in the Appendix at App. A-1. The trial court's memorandum decision regarding jurisdiction is contained in the Appendix at App. A-2.

STATEMENT OF JURISDICTION

The Supreme Court of the State of South Dakota, the highest court of the State, entered final judgment on March 11, 2026. App A-1. This petition is timely under Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1257(a) because the petition seeks review of a final judgment rendered by the highest court of the State of South Dakota, the title, right, privilege, or immunity of Petitioner is specifically set up and claimed under the Constitution, treaties, and statutes of the United States, and because the federal question was necessarily decided by the state court and was essential to the resolution of the case.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

U.S. Const. Art. I, § 8, Cl 3, provides for the “Power of Congress to regulate commerce”: “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]”

U.S. Const. Art. VI, Cl 2, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,

any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

18 U.S.C. § 1151 provides:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

This case also involves the Treaty with the Yankton Sioux, Apr. 19, 1858, 11 Stat. 743 (“1858 Treaty”) as well as the Act of Aug. 15, 1894, ch. 290, 28 Stat. 286, 314-319 (“1894 Act”), which are included in the Appendix at App. B.

Other pertinent sections of federal laws and regulations referenced below, and which are also in the Appendix at App. B, include the Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq.; the Adam Walsh Child Protection and Safety Act, 34 U.S.C. §§ 20901 et seq; 25 U.S.C. § 177 (Purchase or grants of lands from Indians); 25 Stat. 676-677, § 4 (Admission of new States); and statutes and regulations for management of Indian affairs and overseeing tribes, 25 U.S.C. §§ 2 & 13; 20 U.S.C. §§ 7701 et seq; 25 C.F.R. §§ 12.21 & 23.101; and 34 C.F.R. § 222.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

Petitioner Hazen Hunter Winckler (“Winckler”), an enrolled member of the Yankton Sioux Tribe, was charged with two criminal offenses under state law

occurring in the town of Lake Andes, Charles Mix County, South Dakota: (1) failure to appear at a pretrial conference at the Charles Mix County courthouse on November 8, 2023, and (2) simple assault arising from an altercation at the Charles Mix County jail on April 2, 2024. App. A-1; *State v. Winckler*, 2026 S.D. 19, ¶¶ 1-2, 14-15.

In both cases, Winckler moved to dismiss for lack of subject matter jurisdiction, arguing that the courthouse and jail are in Indian country under 18 U.S.C. § 1151, thus depriving the state of jurisdiction over him as an enrolled tribal member. The parties stipulated to essential historical facts: Winckler is an enrolled member of the Yankton Sioux Tribe; the alleged offenses occurred on lands included in the Yankton Sioux Reservation created by the 1858 Treaty; the lands were subsequently allotted to a Tribe member by United States Trust Patent dated May 8, 1891; the lands were addressed in the 1894 Act; and the lands now comprise Lake Andes, where the county courthouse and jail are located. App. A-3; App. C-1 – C-2.

1. The State Circuit Court’s Decision.

The Circuit Court of the First Judicial Circuit, Charles Mix County, denied Winckler’s motions to dismiss on October 11, 2024, determining that the courthouse and jail do not sit in Indian country under any subsection of 18 U.S.C. § 1151. App. A-2; Memorandum Decision (Jurisdiction). Following a jury trial in the failure to appear case, Winckler was convicted and sentenced to six years imprisonment with six years suspended. In the simple assault case, Winckler, specifically reserving his jurisdictional objection, entered a stipulation to a factual basis, was found guilty by

the trial court, and sentenced to time served. Winckler timely filed notices of appeal in both cases on February 6, 2025.

2. The South Dakota Supreme Court's Decision.

The South Dakota Supreme Court consolidated Winckler's appeals for opinion and affirmed both convictions on March 11, 2026. App. A-1; *State v. Winckler*, 2026 S.D. 19, 33 N.W.3d 58. The court held that the courthouse and jail are not in Indian country under 18 U.S.C. § 1151(a), (b), or (c), relying on its prior precedent in *Bruguier v. Class* which held that the Yankton Sioux Reservation was "effectively terminated." App. A-4; *Id.*, 1999 S.D. 122, ¶ 40, 599 N.W.2d 364, 378.

As to § 1151(a), the court relied on *Bruguier's* holding that the Yankton Sioux Reservation had been disestablished and that allotted lands conveyed to non-Indian owners were divested of reservation status. App. A-1; *Winckler*, 2026 S.D. 19, at ¶¶ 25-34. As to § 1151(b), the court held Lake Andes does not qualify as a dependent Indian community because the land is held in fee, is freely alienable, and is not under active federal control sufficient to establish federal superintendence. *Id.*, at ¶¶ 35-42. As to § 1151(c), the court held Indian title was extinguished when the allotted lands passed into non-Indian ownership. *Id.*, at ¶¶ 43-45.

3. Justice Salter's Concurrence.

Justice Salter concurred in the decision but expressed doubt about *Bruguier's* holding, stating it is "not correct" and expressing skepticism that a state court could authoritatively declare reservation lands disestablished. *Id.*, 2026 S.D. 19, at ¶¶ 78-83. Justice Salter noted that the Yankton Sioux Reservation may continue to exist,

observing that parcels of reservation land allotted to individual Tribe members “persist today, as if outside of time, exactly as they did generations ago.” *Id.*, at ¶ 81 (citation omitted).

II. HISTORICAL BACKGROUND

1. The 1858 Treaty and Establishment of the Yankton Sioux Reservation.

At the turn of the eighteenth century, the Yankton Sioux Tribe held exclusive dominion over approximately 13 million acres of land between the Des Moines and Missouri Rivers. *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 333 (1998). In 1858, the Yankton Sioux Tribe entered into a treaty with the United States,¹ ceding all aboriginal lands except approximately 430,405 acres located in what is now Charles Mix County, South Dakota. *Id.*, 522 U.S., at 334.

The 1858 Treaty affirmatively recognized the Tribe’s “Title” to the lands and promised that the United States would protect the Yankton Sioux in their “quiet and peaceable possession” of the tract reserved for their future home. App. B-1; 11 Stat. 743, 744; Arts. I-IV. The Treaty stipulated that the Yankton Sioux could not alienate, sell, or dispose of any part of their reserved tract except to the United States, providing that the tract may be surveyed and divided among the Tribe’s members. App. B-1; 11 Stat. 743, at 747; Art. X. The Treaty acknowledged the Tribe’s dependence upon the United States in pledging friendly relations, established federal authority over offenders against treaties, laws, and regulations within the limits of

¹ See App. B-1; 11 Stat. 743, 744-749; Articles I-XVII.

the reservation, and provided for the appointment of a federal Indian agent to serve the Yankton Sioux Tribe. *Id.*; Arts. XI & XV.

2. Allotment and the 1894 Act.

Following the 1858 Treaty, tracts within the Yankton Sioux Reservation were allotted to individual Yankton Indians. *Yankton Sioux Tribe*, 522 U.S. 329, at 336. Individual allotments totaling approximately 262,300 acres were scattered across the Reservation among approximately 168,000 acres of unallotted surplus land. *Id.*

In 1892, the Yankton Sioux Tribe and the United States negotiated an agreement, which Congress ratified in the Act of August 15, 1894. App. B-2; 28 Stat. 286, 314-319.² The 1894 Act, at Article I, provides that the Yankton Sioux agreed to cede to the United States “all their claim, right, title, and interest in and to all the unallotted lands within the limits” of the Reservation. App. B-2; 28 Stat. 286, at 314 (“Unallotted lands ceded”). The United States agreed, at Article II, to pay \$600,000 as consideration for the unallotted lands ceded. App. B-2; 28 Stat. 286, at 315; (“Consideration”).

² In *Yankton Sioux Tribe v. Podhradsky*, the Eighth Circuit reviewed the circumstances surrounding the Tribe’s agreement to sell its surplus lands, finding significant the explanations of government negotiators to tribal members leading up to the agreement, including that “[the Great White Father] wants to give you a chance to sell your surplus lands *He has told us to tell you that you will not be forced to part with your lands unless you want to.... He does not want you to sell your homes that he has allotted to you. He wants you to keep your homes forever.*” See *Id.*, 606 F.3d 994, 1008-1009 (8th Cir. 2010) (alteration and emphasis in *Podhradsky*) (citing Council of the Yankton Indians (Oct. 8, 1892), *transcribed in* S. Exec. Doc. 27, 53d Cong., 2d Sess., 47, 49 (1894)). The Eighth Circuit observed that “the Tribe, while willing to sell its surplus, was concerned with maintaining a presence on the allotted lands and preserving the support of the federal government and its superintendence over those lands.” *Id.*, 606 F.3d 994, at 1009.

Critically, the 1894 Act separately addressed allotted lands, tribal rights, and continuing federal oversight and support for the Tribe, including for the care and maintenance of tribal members, schools and educational purposes, and courts of justice and other local institutions, and reserving part of the surplus lands for agency, schools, and other purposes. App. B-2; 28 Stat. at 315-316; Arts. V & VIII. The Act expressly guaranteed “Tribal rights,” including “the undisturbed and peaceable possession of their allotted lands” and “all the rights and privileges of the tribe[.]” *Id.*; 28 Stat. at 317; Art. XIII. The Act further promised that “Congress shall never pass any act alienating any part of these allotted lands from the Indians.” *Id.*; Art. XIV. The Act also proscribed the introduction of liquor upon the ceded lands and “any other lands within or comprising the reservations of the Yankton Sioux” and reaffirmed that the 1858 Treaty shall be in full force and effect. *Id.*; Arts. XVII-XVIII.

3. Development of Lakes Andes on Allotted Land.

Upon Tribal allotted land, Lake Andes was platted in 1901 and established as a town in 1904. *Bruguier*, 1999 S.D. 122, ¶ 5, 599 N.W.2d at 366-67. The land upon which Lake Andes was built was part of a 200-acre allotment given to a Yankton Tribe member, Čhetánřhánřka (Cetantanka / Great Hawk),³ by United States Trust Patent dated May 8, 1891, which was recorded with the Register of Deeds for Charles

³ Names of this caliber were often passed down through generations, earned in battle or given through spiritual visions, cementing the family’s status as protectors of the *Oyate* (the people). *See* App. B-1; 1858 Treaty (named chiefs and delegates, Grabbing Hawk). The Hawk name functions as a prominent traditional lineage that continues into modern tribal leadership, preserving oral history, sacred knowledge, ceremonial traditions and cultural protocols through generations. App. C-1; Exhibit 22, *Tribal Contact Information*, Business & Claims Committee, Robert Flying Hawk, Chairman (2022); Exhibit 16, Flying Hawk letter, *Ihanktonwan Consultation Wo’ope* (Yankton Sioux Consultation Protocols).

Mix County on December 2, 1903. App. C-1; Exhibit 3; U.S. Trust Patent. Great Hawk's heirs purportedly sold 80 acres following his death, conveying legal title to the Lake Andes Townsite Company in 1904. *Bruguier, supra*. By 1916, Lake Andes became the county seat, and the Charles Mix County courthouse and jail both sit on this allotted land. *Id.*

III. CURRENT STATUS OF LAKE ANDES

According to the U.S. Census Bureau 2020 Decennial Census, data provided to the court below, Lakes Andes had a total population of 710 inhabitants, with 343 identifying as Indian (alone) and 286 identifying as White (alone). https://data.census.gov/profile/Lake_Andes_city,_Charles_Mix_County,_South_Dakota (accessed Sept. 27, 2025).⁴ Lake Andes is demarcated as a Tribal Block Group on the 2020 U.S. Census Tribal Tract Map. App. C-1, Exhibit 12 & App. D-1.⁵

Federal, tribal, county and township authorities provide services in the area, including among them, law enforcement, fire protection, education, and maintenance. App. C. When severe flooding was recently affecting Lake Andes and the Yankton Sioux Tribe requested emergency assistance from the State, however, the State denied the Tribe's request on grounds that "the tribe has Bureau of Indian Affairs

⁴ Population, demographic, and socio-economic data for the Yankton Sioux Indian Community within the 1858 Treaty lands or Charles Mix County as a whole, is contained in the Yankton Sioux Tribe's Economic Development Strategy (2022), at App. C-1; Exhibit 22.

⁵ Census criteria specify that tribal block groups comprise a reasonably compact and contiguous Indian land area with a population threshold of at least 600 residents and a housing unit threshold of at least 240 units. App. D-2; U.S. Depart. of Commerce, Form G-600, OMB No. 0607-1003; *Papasan v. Allain*, 478 U.S. 265, n.1 (1986) (Court may take notice of items in the public record).

funding, materials, tribal equipment and personnel” to control the flooding at Lake Andes. App. C-1; Exhibit 17. On other occasions, nevertheless, the State has cooperated with its federal-tribal counterparts in Lake Andes by properly utilizing the Tribe’s extradition procedures to arrest Tribe members in or around Lake Andes for suspected off-reservation state law violations. App. C-1; Exhibit 23; *see also* App. B-10; YST, Title II, Rule 33, Extraditions.

The Federal Government maintains significant presence overseeing the Yankton Sioux inhabiting the area, including law enforcement through the Yankton Sioux Tribal Police with a Law Enforcement Center in Lake Andes, a corrections facility through the Bureau of Indian Affairs, healthcare through Indian Health Services, education support through the Bureau of Indian Education, tribal housing, transportation, and infrastructure support, and a Bureau of Indian Affairs Superintendent with oversight responsibilities. *See* App. C-1 – App. C-2 & Exhibits.⁶ The Yankton Sioux Tribe maintains dozens of tribal business entities, programs, and departments through the Tribe’s governmental structures of traditional consensus based decision-making combined with a democratically elected framework, including the Yankton Sioux Tribe’s Business and Claims Committee and the Yankton Sioux Tribal Court. App. C-1; Exhibits 16, 21-23; *see also* Yankton Sioux Tribe,

⁶ The Indian Law Enforcement Reform Act, 25 U.S.C. §§ 2801 et seq, establishes framework for law enforcement in Indian country, authorizing BIA law enforcement officers to enforce federal criminal statutes and to issue commissions to other law enforcement officers, including state, local, and tribal, to assist in that role. App. B-3; 25 CFR § 12.21. Broader responsibilities of the Federal Government under statutes like 25 U.S.C. §§ 2 & 13 (App. B-4), underscore the federal role overseeing Tribal affairs in the area consistent with the 1858 Treaty and 1894 Act.

Government, <https://www.yanktonsiouxtribe.net> (accessed May 23, 2026); South Dakota Unified Judicial System, *Tribal Courts*, <https://uj.s.sd.gov/tribal-courts/> (Yankton Sioux Tribe) (accessed May 23, 2026).⁷

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act including the Sex Offender Registration and Notification Act (SORNA). App. B-5; 34 U.S.C. §§ 20901 et seq.⁸ The Yankton Sioux Tribe has implemented SORNA, requiring convicted offenders to register with the Tribal Registry Office located at 400 School Street, Lake Andes, SD 57356. Yankton Sioux Tribe, *SORNA*, <https://www.yanktonsiouxtribe.net/sorna> (accessed May 25, 2026). In coordination with the U.S. Department of Justice, the Tribe maintains a sex offender registry website listing registered offenders residing in Lake Andes. Yankton Sioux Tribe, *Public Sex Offender Registry*, <https://yankton.nsopw.gov/GeographicalSearch.aspx> (accessed May 25, 2026).

Finally, as the State correctly pointed out below, the Federal Government also imposes control over the area through laws and regulations that ensure Indian students receive equitable education opportunities, including through the Impact Aid law, codified under 20 U.S.C. §§ 7701 et seq., and implemented through the regulations under 34 C.F.R. § 222 (Special Provisions for Local Educational Agencies

⁷ The South Dakota Department of Tribal Relations also maintains a webpage for “Tribal Government Information,” including the Yankton Sioux Tribe. <https://sdtribalrelations.sd.gov/tribes/Yankton-Sioux-Tribe.aspx> (accessed May 26, 2026).

⁸ SORNA establishes a comprehensive national system for the registration of sex offenders, mandating that jurisdictions, including states, territories, and federally recognized Indian tribes, maintain sex offender registries and enforce registration requirements. B-5; 34 U.S.C. § 20903 (Tribal registry), § 20911 (Relevant definitions, jurisdictions).

that Claim Children Residing on Indian Lands). App. B-6 – B-7; *see* App. C-2; State’s Exhibit F. In Lakes Andes, the Andes Central School District has established Indian Policies and Procedures required by federal law that protects the Yankton Sioux Tribe and its students attending local schools. *Id.*⁹

IV. THE STATE CHARGES AND STIPULATED FACTS

Winckler is an enrolled member of the Yankton Sioux Tribe. He was charged in state court with failure to appear at a pretrial conference at the Charles Mix County courthouse on November 8, 2023, and simple assault¹⁰ at the Charles Mix County jail on April 2, 2024. The alleged offenses occurred on land included in the Yankton Sioux Reservation created by the 1858 Treaty, subsequently allotted by United States Trust Patent dated May 8, 1891, addressed in the 1894 Act, and now comprising Lake Andes. App. A-1; 2026 S.D. 19, at ¶ 7; App. A-2, Memorandum Decision, at 3; App. A-3, Transcript (including stipulations); App. C-1, Volesky Affidavit; App. C-2, Wenzel Affidavit.

⁹ Importantly, in a similar vein, the Indian Child Welfare Act of 1978 established federal standards through a comprehensive legal framework prioritizing tribal jurisdiction, cultural preservation, and federal oversight to protect Indian families and tribes by ensuring that tribal sovereignty is respected in child custody proceedings involving Indian children – including those originating in state court at the Charles Mix County courthouse in Lake Andes. App. B-8 – B-9; 25 U.S.C. §§ 1901 et seq. The BIA has established regulations and procedural safeguards to ensure the State’s compliance with ICWA requirements. *Id.*; §§ 1951-1952; 25 C.F.R. § 23.101.

¹⁰ The State made no contention in the record below that the victim of the simple assault was anything other than an Indian under federal law. The victim was named in the charging documents and identified by the State’s *eCourts* website as Native American.

SUMMARY OF ARGUMENT

This petition presents pure questions of federal law regarding the definition of Indian country under 18 U.S.C. § 1151, interpretation of the 1858 Treaty and the 1894 Act, and the existence of state criminal jurisdiction over an enrolled tribal member for offenses occurring on historically allotted reservation lands. This case warrants the Court's review because the South Dakota Supreme Court's decision below directly conflicts with this Court's precedents in *McGirt v. Oklahoma*, 591 U.S. 894 (2020) and *Solem v. Bartlett*, 465 U.S. 463 (1984), and facilitates impermissible checkerboard jurisdiction.

The South Dakota Supreme Court held that Yankton Sioux allotted lands within the Yankton Sioux Reservation lose their Indian country status upon conveyance to non-Indian owners. This holding contradicts *McGirt's* foundational principle that only Congress can divest Indian country status, and Congress must clearly express its intent to do so through explicit statutory language. The 1894 Act's plain language demonstrates that Congress did not intend to divest allotted lands of Indian country status. The Act explicitly cedes only unallotted lands while separately guaranteeing the Yankton Sioux the undisturbed and peaceable possession of their allotted lands, promising that Congress shall never pass any act alienating any part of these lands from the Indians and reaffirming the 1858 Treaty.

The state court's approach allows private real estate transactions to divest Indian country status without any congressional involvement, violating *McGirt's* prohibition on consulting extratextual sources when the statutory language is clear.

This creates precisely the kind of checkerboard jurisdiction that this Court has repeatedly rejected, where the same parcel of land may or may not constitute Indian country depending solely on whether a non-Indian owner holds title. It is an extratextual rule based on subsequent historical developments, demographics, and settlement patterns, which cantilevers the state court's entire decisional analysis of Indian country under 18 U.S.C. § 1151.

Even if the Court were to accept the state court's holding under § 1151(a), the land qualifies as Indian country under § 1151(b) (dependent Indian community) or § 1151(c) (unextinguished Indian title). Lake Andes satisfies both requirements for dependent Indian community status: the lands were set aside by the Federal Government for Indian use through the 1858 Treaty and 1894 Act, and they remain under federal superintendence through comprehensive federal statutory frameworks and active federal presence. Indian title to allotted lands has not been extinguished because Indian title is a sovereign encumbrance that can be extinguished only by clear congressional action, not by private transactions.

Under each subsection of 18 U.S.C. § 1151, the court below decided important questions of federal law in ways that conflict with relevant decisional authorities of this Court, as well as decisions of multiple federal circuit and state appellate courts. This Court should grant the petition to resolve these conflicts and to settle important questions of federal law. Supreme Court Rule 10(b)-(c).¹¹

¹¹ Interpretation of treaties and statutes is reviewed de novo; state-court interpretations of federal law are not entitled to deference. *McGirt*, 591 U.S., at 897-899. While pure legal questions predominant the jurisdictional issue, relevant historical facts, public records, and documents were stipulated to by the parties for the record below –

REASONS FOR GRANTING THE PETITION

I. THE SOUTH DAKOTA SUPREME COURT'S DECISION CONFLICTS WITH *McGIRT*'S REQUIREMENT OF CLEAR CONGRESSIONAL INTENT TO DIVEST INDIAN COUNTRY STATUS

1. *McGirt* Requires Clear Congressional Intent Expressed in Statutory Text.

In *McGirt*, the Court held that only Congress can divest a reservation of its land and diminish its boundaries, and Congress must clearly express its intent to do so. 591 U.S. 894, 903-904. The Court explained that disestablishing Indian lands requires an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests in the affected lands. *Id.*, at 904, 906. The Court emphasized that there is no need to consult extratextual sources when the meaning of a statute's terms is clear, and extratextual sources may not overcome those terms. *Id.*, at 913-916.

McGirt reaffirmed the principle established in *Solem* that once a block of land is set aside for an Indian reservation, the entire block retains its reservation status until Congress explicitly indicates otherwise, no matter what happens to the title of individual plots within the area. *Solem*, 465 U.S. 463, at 470; *see also McGirt*, 591 U.S., at 906 (“Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others”) (citations omitted); *Id.*, at 907 (“To accomplish that would require an act of cession, the transfer of a sovereign claim from one nation to another”) (citation omitted). The Court in

although subsequent demographic history and land treatment may be the “least compelling” form of evidence. *Yankton Sioux Tribe*, 522 U.S. 329, at 356. “[T]he most authoritative evidence...lies in the treaties and statutes that promised the land to the Tribe in the first place.” *McGirt*, 591 U.S., at 927.

Solem recognized that at the turn of the century, Congress assumed the reservation system would fade over time, “within a generation at most.” *Id.*, 465 U.S., at 468. But *Solem* also warned that the Court has never been willing to extrapolate from this “turn-of-the-century assumption” a specific congressional purpose of diminishing or disestablishing reservation lands with the passage of every surplus land Act. *Id.*, at 468-469.

Disestablishment or diminishment “may not be lightly inferred and treaty rights are to be construed in favor, not against, tribal rights.” *McGirt*, 591 U.S., at 916 (citing *Solem*, 465 U.S., at 472); see also *United States v. Celestine*, 215 U.S. 278, 290-291 (1909) (allotment act must “be construed in the interest of the Indian” to continue federal guardianship absent “clear” evidence of congressional intent). Courts must not “lightly assume that Congress in fact intends to undermine Indian self-government,” *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 790 (2014), and must “resolve any ambiguities in favor of the Indians.” *Yankton Sioux Tribe*, 522 U.S. 329, at 344.

2. The 1894 Act’s Plain Language Preserves Allotted Lands as Indian Country.

The 1894 Act’s plain language demonstrates that Congress did not intend to divest allotted lands of Indian country status. The Act explicitly provides that the Yankton Sioux cede to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation. App. B-2; 28 Stat. 286, at 314-315; Preamble & Arts. I-II. The Act contains no language expressing intent to divest allotted lands of Indian country status.

To the contrary, the 1894 Act separately addressed the status of allotted lands and explicitly guaranteed tribal rights to those lands. Specifically, the Act guaranteed the Yankton Sioux “the undisturbed and peaceable possession of their allotted lands” including “all the rights and privileges of the tribe[.]” App. B-2; 28 Stat., at 317; Art. XIII. The Act further promised that “Congress shall never pass any act alienating any part of these allotted lands from the Indians.” *Id.*; Art. XIV. The Act also included protections that proscribed certain conduct on the ceded lands as well as “any other lands within or comprising the reservations of the Yankton Sioux,” and reaffirmed that the 1858 Treaty shall be in full force and effect. App. B-2; 28 Stat., at 318; Arts. XVII-XVIII. These provisions demonstrate that Congress intended to preserve tribal rights to allotted lands, not to divest them of Indian country status upon private conveyance.

In *South Dakota v. Yankton Sioux Tribe*, the Court explicitly declined to decide whether the 1894 Act altered the status of allotted lands. 522 U.S. 329, at 358. The Court held only that the Act diminished the reservation to the extent of the unallotted surplus lands that were ceded. The Court did not address whether allotted lands remain Indian country, leaving that question open.

3. The South Dakota Supreme Court Improperly Relied on Extratextual Sources.

The South Dakota Supreme Court’s decision below conflicts with *McGirt* by relying on extratextual sources rather than the statutory text. The court adopted a rule that allotted lands lose Indian country status upon conveyance to non-Indian ownership, based on its prior precedent in *Bruguier v. Class*, 1999 S.D. 122, 599

N.W.2d 364. App. A-4. However, in focusing on the cession and sum certain language in Articles I and II, brushing off “a few of the purportedly discrepant provisions,” and indicating “more uncertain provisions of the 1894 Act cannot be wholly explained,” the court in *Bruguier* did not correctly analyze or discuss the 1894 Act in its full textual and historical terms, including Articles V, VIII, XIII, XIV, XVII, and XVIII consistent with the 1858 Treaty stipulations and promises. *See Bruguier*, 1999 S.D. 122, at ¶¶ 23-27. Instead, the court described “an end to tribal existence” with the practice of allotment and principally relied on subsequent historical developments, demographic changes, and settlement patterns to conclude that the reservation was “effectively terminated by the 1894 Act.” *Id.*, 1999 S.D., ¶¶ 28-35, 40; App. A-1; *Winckler*, 2026 S.D. 19, ¶¶ 24-25.

This approach directly conflicts with *McGirt’s* prohibition on consulting extratextual sources when the statutory language is clear. The 1894 Act’s language is clear: it cedes only unallotted lands and explicitly guarantees tribal rights to allotted lands while reaffirming the 1858 Treaty. The subsequent conveyance of some allotted lands to non-Indian ownership is an extratextual development that cannot override the statutory text.

The South Dakota Supreme Court’s approach allows private transactions to accomplish what only Congress can do. Under the rule adopted by the decision below, individual real estate transactions – not congressional action – determine whether land retains Indian country status. This inverts the constitutional allocation of power

and permits private parties to divest Indian country status without any congressional involvement, conflicting with this Court’s Indian country precedents.

II. THE INCREMENTAL DIMINISHMENT THEORY ADOPTED BELOW CREATES IMPERMISSIBLE CHECKERBOARD JURISDICTION AND CONFLICTS WITH FEDERAL CIRCUIT COURT PRECEDENT

1. The Rule Creates Checkerboard Jurisdiction Dependent on Private Ownership.

The South Dakota Supreme Court’s holding that Indian country status depends on whether the allotted lands have been conveyed to non-Indian ownership – premised upon *Bruguier’s* “effective termination” analysis – creates precisely the kind of checkerboard jurisdiction that this Court has rejected. Under the rule adopted below, the same parcel of land within the historic Yankton Sioux Reservation may or may not constitute Indian country depending solely on whether a non-Indian owner holds title.

This approach conflicts with the statutory definition of Indian country under 18 U.S.C. § 1151, which establishes objective criteria for determining federal Indian country jurisdiction. The statute does not condition Indian country status on the current ownership of fee title. Rather, it focuses on whether the land falls within reservation boundaries under subsection (a), qualifies as a dependent Indian community under subsection (b), or remains encumbered by Indian title under subsection (c). 18 U.S.C. § 1151.

By making Indian country status contingent on private ownership history, the South Dakota court’s approach creates jurisdictional instability. A single reservation block of land becomes a patchwork of Indian and non-Indian country based on the

happenstance of historical conveyance, rendering criminal jurisdiction unpredictable and dependent on title searches rather than on clear legal principles.

2. The Decision Conflicts with Circuit Court Precedent.

The decision below endorses a theory of incremental diminishment which has been squarely rejected by the Seventh Circuit as incompatible with this Court's precedents. *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 675-676 (7th Cir. 2020). In *Oneida Nation*, the Seventh Circuit explained that a theory under which individual parcels of land would be removed from the reservation as they passed into the hands of non-Indians creates impermissible checkerboard jurisdiction that has been rejected repeatedly by this Court. *Id.*, at 676 & 680-682 (citing cases).

The Eighth Circuit has held that the Yankton Sioux Reservation was diminished but not disestablished by the 1894 Act, and that certain allotted lands remain part of the diminished reservation and qualify as Indian country under § 1151(a). *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994 (8th Cir. 2010); *Yankton Sioux Tribe v. Gaffey*, 188 F.3d 1010 (8th Cir. 1999); *but see also Oneida Nation, supra*, 968 F.3d, at 680-82 (specifically rejecting any Eighth Circuit assumption of incremental diminishment). The Eighth Circuit has also recognized that § 1151(a) preserves federal and tribal jurisdiction even if reservation lands passed out of individual Indian ownership. *Podhradsky, supra*, 606 F.3d 994.

The South Dakota Supreme Court's approach utilized the theory of incremental diminishment that held the Yankton Sioux Reservation had been "effectively terminated." *See* App. A-1; Winckler, 2026 S.D. 19, ¶ 26, citing *Bruguier*,

1999 S.D. 122, ¶ 40, 599 N.W.2d 364, 378. This sweeping overreach violates the principle that States have no authority to reduce federal reservations lying within their borders – a concern expressed by Justice Salter’s concurrence below questioning reliance on *Bruguier’s* holding. App. A-1; *Winckler*, 2026 S.D., at ¶ 83, citing *McGirt*, 591 U.S. 894, at 903.

3. The Issue Has Recurring National Importance.

The question presented has recurring national importance. While treaties, statutes, and surplus land Acts must be read in respect to the specific tribe and tribal lands in question, general allotment practices and subsequent fee conveyances occurred across the country, affecting numerous tribes and reservations. As such, the case is likely to draw broad interest from tribal governments, states, and the United States as amicus. Criminal jurisdiction depends on the definition of Indian country under 18 U.S.C. § 1151. Inconsistent rules across jurisdictions create conflict, including the South Dakota rule which undermines tribal sovereignty by making tribal and federal jurisdictional authority contingent on private property ownership, destabilizing the federal-state-tribal allocations of authority that Congress has established through treaty and statute.

Accordingly, the need for this Court’s review is acute. If the South Dakota rule prevails, tribes will lack predictable jurisdiction over their own territories, federal prosecutors will face uncertainty in determining whether they have jurisdiction over crimes committed on reservation lands, and states will be able to assert jurisdiction based on the happenstance of fee ownership and conveyance to a non-Indian.

III. THE LAND QUALIFIES AS INDIAN COUNTRY UNDER ALTERNATIVE PROVISIONS OF 18 U.S.C. § 1151

1. Dependent Indian Community Status Under § 1151(b).

Under § 1151(b), Indian country includes all dependent Indian communities. The Court has held that a dependent Indian community must satisfy two requirements: (1) the lands must have been set aside by the Federal Government for the use of Indians as such, and (2) they must be under federal superintendence. *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 (1998).

Here, the 1894 Act's explicit guarantees of tribal rights to allotted lands, combined with continuing federal involvement, support for essential services, and control overseeing the area as guardian for the Tribe, satisfies both requirements. The Act guaranteed the Tribe "undisturbed and peaceable possession" of allotted lands, promised that "Congress shall never pass any act alienating any part of these lands from the Indians," provided for continuing federal support for "the care and maintenance" of Tribe members, "for schools and educational purposes" for the Tribe, "for courts of justice and other local institutions," and reaffirmed the 1858 Treaty. App. B-1 – App. B-2.

The Federal Government continues to provide support and exercise control overseeing activities occurring on the lands in carrying out the federal trustee/guardian role for the Yankton Sioux Tribe and its members inhabiting the lands. App. B-3 – B-9. This includes federally dependent essential services, assistance and support for law enforcement, healthcare, education, housing, transportation, and infrastructure. App. C-1 – App. C-2; Exhibits. Accordingly, a

federal Indian agent continues to serve for the Yankton Sioux Tribe. App. C-1; Exhibit 13; *see* App. B-1; 1858 Treaty, 11 Stat. 743, 747; Art. XV (Indian agent for the Yankton Sioux).

In *Alaska v. Native Village of Venetie Tribal Gov't*, the Court considered the Alaska Native Claims Settlement Act (ANCSA), which is materially different than the 1894 Act in text and purpose. *Id.*, 522 U.S. 520, at 523 (discussing ANCSA, 43 U.S.C. § 1601). The Court in *Venetie* recognized that the ANCSA sought to end federal supervision over the affairs of the Alaskan Natives by revoking the existing reservations and extinguishing all aboriginal claims to Alaska land, and it expressly intended to accomplish its purposes “without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] *without creating a reservation system or lengthy wardship or trusteeship.*” *Id.*, 522 U.S., at 524 (quoting ANCSA) (alteration and emphasis in *Venetie*).

By material contrast, the 1894 Act explicitly guaranteed tribal rights to allotted lands and reaffirmed the 1858 Treaty. This distinction supports a finding that the lands remain both federally set aside and under federal superintendence, particularly given the continuing federal trustee/guardian role for the Yankton Sioux Tribe, comprehensive federal statutes and regulations protecting the Tribe, and federally dependent essential services, healthcare, education, law enforcement, courts of justice, and other local institutions affecting the lands and Indian community inhabiting those lands.

The South Dakota Supreme Court held that Lake Andes does not qualify as a dependent Indian community because, according to its decision below, the land was conveyed in fee to non-Indian owners and federal authorities do not exercise sufficient control in the area. App. A-1; *Winckler*, 2026 S.D. 19, ¶¶ 39-42. In doing so, the court again relied on *Bruguier's* analysis to conclude that the lands' "status changed when it was sold in fee simple to a non-Indian" and then cited *Venetie* to emphasize non-Indian fee ownership, the provision of services by county and township authorities, as well as the demographics of Charles Mix County as a whole, notwithstanding the Yankton Sioux Indian community in particular. *Id.*; *But see*, e.g., *State v. Romero*, 2006-NMSC-039, ¶ 26, 140 N.M. 299, 308 (holding privately-held fee lands within exterior boundaries of Pueblos are Indian country under 18 U.S.C. § 1151(b)); *see also United States v. Arrieta*, 436 F.3d 1246, 1250 (10th Cir. 2006) (finding federal superintendence where the federal government maintained a supervisory role over the Pueblo community, despite state involvement in road maintenance).

The South Dakota Supreme Court erroneously focused on mere "forms of general federal aid" as discussed in *Venetie*, 522 U.S., at 534 – without properly considering the 1894 Act's provisions for continuing federal support and oversight, nor the Act's guarantee of the allotted lands to the Yankton Tribe in perpetuity consistent with the reaffirmation of the 1858 Treaty promises. The court failed to acknowledge the extent and nature of the continuing federal support and guardianship role that includes comprehensive federal statutory and regulatory frameworks respecting the Yankton Sioux inhabiting the allotted lands promised to

them. Even the State acknowledged presence of federal control when it submitted the Indian Policies and Procedures required of public schools in Lake Andes to protect the Yankton Sioux students. App. C-3, Exhibit F.

Moreover though, the federal superintendence with respect to the Yankton Sioux in the area was recognized, considered, and approved by this Court long ago. In *Perrin v. United States*, the Court recognized federal authority regulating conduct even on the lands ceded under the 1894 Act, noting that “the power of Congress in dealing with the Indian wards and adopting measures for their protection is incident only to the presence of the Indians and their status as wards of the Government.” *See Perrin*, 232 U.S. 478, 485-487 (1914) (and cases cited therein).

The decision below decided an important federal question in a way that conflicts with relevant decisions of this Court and of other state appellate and federal circuit courts, including questions that have not been, but should be, settled by this Court. Supreme Court Rule 10(b)-(c). This important federal question requires the Court’s resolution of conflicting interpretations of law to settle the proper application of *Venetie’s* set-aside and federal superintendence requirements under 18 U.S.C. § 1151(b), particularly for Indian communities situated on their allotted lands within the historical boundaries of treaty-created reservations of tribes that continue under federal guardianship.

2. Unextinguished Indian Title Under § 1151(c).

Under § 1151(c), Indian country includes all Indian allotments, the Indian titles to which have not been extinguished. Indian title is a sovereign encumbrance

that can be extinguished only by clear congressional action, not by private transactions. (25 U.S.C. § 177; App. B-11); (25 Stat. 676-677, § 4; App. B-12); *Blatchford v. Gonzales*, 100 N.M. 333, 337 (1983-NMSC-060) (Congress has exclusive authority to extinguish Indian title “irrespective of who holds the underlying fee title in the land” and “courts have required a showing of a clear and specific indication of congressional intent to extinguish Indian title” (citing cases)); *see also United States v. Shoshone Tribe of Indians*, 304 U.S. 111, 117-118 (1938) (“authority of the United States to prescribe title by which individual Indians may hold tracts selected by them within the reservation, to pass laws regulating alienation and descent and for the government of the tribe and its people detracts nothing from the tribe’s ownership”); *Buttz v. Northern Pacific Railroad*, 119 U.S. 55, 68 (1886) (Indian title “protected by the political power and respected by the courts until extinguished” (citation omitted)).

Yankton Sioux title is affirmatively recognized in the 1858 Treaty. App. B-1; 11 Stat. 743, at 744. The sovereign encumbrance of Indian title is explicitly preserved by the 1894 Act’s guarantee of the allotted lands to the Tribe, and Congress has never passed any statute extinguishing that title. App. B-2; 28 Stat. 286, at 317-318. The 1894 Act’s structure demonstrates that Congress did not intend private conveyance to extinguish Indian title in allotted lands. The Act addressed unallotted lands through a cession provision, separately guaranteed tribal rights in allotted lands, and reaffirmed the 1858 Treaty. The Act explicitly promised that Congress shall never pass any act alienating any part of these allotted lands from the Indians. The 1894

Act's language shows Congress intended to preserve tribal title as a sovereign interest independent of individual fee ownership.

In *United States v. Santa Fe P. R. Co.*, the Court examined various Acts of Congress to determine whether Indian title to the Walapais' aboriginal lands was extinguished. *Id.*, 314 U.S. 339, 350 (1941). After searching "the public records in vain for any clear and plain" congressional intent, the Court found no indication that Congress intended to extinguish all of the rights which the tribe had in their ancestral home. *Id.*, at 353. The Court noted, "That Congress could have effected such an extinguishment is not doubted. But an extinguishment cannot be lightly implied in view of the avowed solicitude of the Federal Government for the welfare of its Indian wards." *Id.*, at 354.

In *United States v. Sandoval*, the Court indicated that the Pueblos' title was not fee simple in the commonly understood sense of the term, as Congress had recognized the Pueblos' title to their ancestral lands by statute, and Executive orders had reserved additional public lands for the Pueblos. *Id.*, 231 U.S. 28, 39 (1913). The Court noted that Congress had enacted legislation with respect to the lands "in exercise of the Government's guardianship over the [Indian] tribes and their affairs" and concluded that federal authorities could exercise jurisdiction over the Pueblo lands which remained encumbered by Indian title. *Id.*, at 48.

In the decision below, the South Dakota Supreme Court held that Indian title of the Yankton Sioux was extinguished when the land passed into non-Indian ownership, relying on *Bruguier's* reading of *Bates v. Clark*, 95 U.S. 204 (1877). App.

A-1; *Winckler*, 2026 S.D., at ¶¶ 44-45. But *Bates* describes the situation where Indians part with title through treaty or act of Congress, in that where Indian title is shown to exist – whether by immemorable use and occupancy or by recognition in a treaty or statute – extinguishment is not accomplished merely by the sale of an individual parcel of land transferring legal title to an individual non-Indian. See *McGirt*, at 907 (“To accomplish that would require an act of cession, the transfer of a sovereign claim from one nation to another”) (citation omitted). *Bates* itself equated extinguishment of Indian title to Indians parting with their title by sovereign action – treaty or act of Congress. *Id.*, 95 U.S., at 208 (observing lands were “Indian country whenever the Indian title had not been extinguished, and continued to be Indian country so long as Indians had title to it, ...unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case”).

Merely changing who holds legal title to pieces of land through individual real estate transactions is not the same as changing the land’s sovereign status. The Yankton Sioux never parted with title to allotted lands through the 1894 Act. To the contrary, the 1894 Act reinforced their title. Individual allottees may have subsequently sold their fee interests, but that is distinct from tribal title extinguishment requiring congressional action. Accordingly, the decision below decided an important federal question regarding Indian title under § 1151(c) in a way that conflicts with relevant decisions of this Court and should be settled by this Court. Supreme Court Rule 10(c).

IV. THIS CASE PRESENTS AN IDEAL VEHICLE FOR SUPREME COURT REVIEW

This case presents an ideal vehicle for certiorari review. The parties stipulated to all essential historical facts, eliminating factual disputes. The jurisdictional issue presents pure questions of federal law of significant importance regarding the interpretation of 18 U.S.C. § 1151, the 1858 Treaty, and 1894 Act. The issue was preserved throughout the proceedings and decided by the state's highest court in a final judgment. App. A-1 – A-3.

The case cleanly presents the conflict between the South Dakota Supreme Court's approach and this Court's precedents in *McGirt* and *Solem*. The stipulated facts establish that the land was included within the Yankton Sioux Reservation created by the 1858 Treaty, was subsequently allotted and addressed in the 1894 Act, and later conveyed to non-Indian ownership. The central question is whether, given these facts, the land qualifies as Indian country under federal law.

The decision below adopts a rule that allotted lands lose Indian country status when they pass into non-Indian ownership, a rule that affects jurisdictional determinations in areas with allotment-era land histories and mixed ownership patterns. Justice Salter's concurrence underscores the doctrinal tension in the state's approach, explaining that *Bruguier's* disestablishment holding is incorrect and that reservation status does not necessarily depend on continuous exterior boundaries. The concurrence notes skepticism that a state court could authoritatively declare reservation lands disestablished, highlighting uncertainty in the state court's broader doctrinal framework relied upon by the decision below.

This internal disagreement – combined with the conflict in the Eighth Circuit’s different approach to the same legal question, the Seventh Circuit’s specific rejection of that approach, and the relevant decisional authorities of this Court, and others, under all three subsections of 18 U.S.C. § 1151 – demonstrates that the jurisdictional issue presents genuinely contested legal questions of significant federal importance decided in conflicting ways, and that should be settled by this Court’s review. Supreme Court Rule 10(b)-(c).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Dated: June 9th, 2026.

Respectfully submitted,

/s/ Tucker J. Volesky

Tucker J. Volesky

Counsel of Record

305 N. Kimball

Mitchell, SD 57301

(605) 996-5542

Tucker.volesky@tuckervoleskylaw.com

Counsel for Petitioner