No. 22-401

In the Supreme Court of the United States

STATE OF ALASKA, PETITIONER

v.

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
TODD KIM
Assistant Attorney General
RACHEL HERON
KEVIN W. MCARDLE
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the U.S. Fish and Wildlife Service's prohibition of hunting brown bears over bait on federal lands in the Kenai National Wildlife Refuge for the purpose of conserving the brown bear population and ensuring public safety is consistent with the Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (16 U.S.C. 3101 *et seq.*).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-44) is published at 31 F.4th 1157. The order of the district court (Pet. App. 55-135) is reported at 500 F. Supp. 3d 889.

JURISDICTION

The judgment of the court of appeals was entered on April 18, 2022. A petition for rehearing en banc was denied on July 29, 2022. The petition for a writ of certiorari was filed on October 27, 2022. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. In 1941, President Franklin D. Roosevelt issued an Executive Order establishing the two-million acre Kenai National Moose Range in territorial Alaska as a refuge to protect "the natural breeding and feeding

range of the giant Kenai moose on the Kenai Peninsula." Exec. Order No. 8979, 6 Fed. Reg. 6471 (Dec. 18, 1941). The refuge was "withdrawn and reserved for the use of the Department of the Interior and the Alaska Game Commission," a federal territorial commission. *Ibid.* The Executive Order authorized "the hunting or taking of moose and other game animals * * * in accordance with" the Alaska Game Law, ch. 75, 43 Stat. 739, "and as may be permitted by regulations of the Secretary of the Interior prescribed and issued pursuant thereto," 6 Fed. Reg. 6471.

The Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, admitted Alaska into the Union and transferred from the federal government to the State certain lands and associated wildlife-management functions, § 6(e), 72 Stat. 340-341. But the Act excluded from that transfer "lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife," *ibid.*, including the Kenai National Moose Range. See *United States* v. *Alaska*, 423 F.2d 764, 768 (9th Cir.) ("The provisions of § 6(e) of the Statehood Act, 72 Stat. 339, 341, specifically exclude all land and water previously withdrawn."), cert. denied, 400 U.S. 967 (1970).

b. In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA or the Act), Pub. L. No. 96-487, 94 Stat. 2371. ANILCA renamed the Kenai National Moose Range the Kenai National Wildlife Refuge (Kenai Refuge), expanded the refuge's borders, and directed the Secretary of the Interior (Secretary) to manage the refuge in furtherance of a broad set of purposes. See § 303(4), 94 Stat. 2391-2393. Among other things, the Secretary must manage the Kenai Refuge "to conserve fish and wildlife populations and habitats in their natural diversity including, but not

limited to, * * * bears." § 303(4)(B)(i), 94 Stat. 2391. The Secretary "may not permit any use" of a federal wildlife refuge in Alaska "unless such use * * * is compatible with the purposes of the refuge." § 304(b), 94 Stat. 2393. And "[t]he Secretary shall prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that activities carried out under any use * * * are so compatible." *Ibid.*

ANILCA also specifically addresses the taking of fish and wildlife on all "conservation system units" in Alaska, 16 U.S.C. 3202(c), which include federal wildlife refuges, 16 U.S.C. 3102(4). The Act states that the "taking of fish and wildlife in all conservation system units * * * shall be carried out in accordance with the provisions of this Act and other applicable State and Federal law." 16 U.S.C. 3202(c). The Act further clarifies that it is not "intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands," and is not "intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands." 16 U.S.C. 3202(a) and (b).

Separately, the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), Pub. L. No. 105-57, 111 Stat. 1252 (16 U.S.C. 668dd *et seq.*), grants the Secretary additional authority to manage federal wildlife refuges. As relevant, the Improvement Act directs the Secretary to "provide for the conservation of fish, wildlife, and plants, and their habitats within the [National Wildlife Refuge] System." 16 U.S.C. 668dd(a)(4)(A). And it prohibits the Secretary from "initiat[ing] or permit[ting] a new use of a refuge or expand[ing] * * * an existing use of a refuge, unless

the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." 16 U.S.C. 668dd(d)(3)(A)(i). "'[C]ompatible use' means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director [of the U.S. Fish and Wildlife Service], will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge." 16 U.S.C. 668ee(1).

2. a. In 1982, the U.S. Fish and Wildlife Service (FWS or the Service) and the State of Alaska entered into a memorandum of understanding to coordinate management of the federal wildlife refuges in Alaska, including the Kenai Refuge. Pet. App. 58-59. In the memorandum, Alaska agreed "[t]o recognize the Service as the agency with the responsibility . . . on Service lands in Alaska to conserve fish and wildlife and their habitats and regulate human use." *Id.* at 59 (brackets in original). FWS and Alaska further agreed that "the taking of fish and wildlife . . . on Service lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with documented Refuge goals, objectives, or management plans." *Ibid.*

Consistent with the memorandum of understanding, FWS regulations require hunters on Alaska's federal wildlife refuges to "comply with the applicable provisions of State law unless further restricted by Federal law." 50 C.F.R. 36.32(c)(1)(i). And the regulations state that FWS refuge managers "may close an area or restrict an activity," including hunting, based on factors like "public health and safety," "resource protection," or "other management considerations necessary to en-

sure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established." 50 C.F.R. 36.42(a) and (b).

b. In 2007, FWS determined that hunting black bears over bait—*i.e.*, using food or other attractants to draw bears to a particular location where they may be easily targeted—was a compatible use of the Kenai Refuge. Pet. App. 63. FWS explained that because of the high density of black bears, there were "no conservation concerns for Kenai area black bears and no reason to further restrict baiting or other practices to meet biological goals." C.A. E.R. 402. FWS's baiting determination was limited to black bears; although state law at the time generally allowed hunting brown bears, it barred hunting brown bears over bait in the Kenai Refuge. Pet. App. 63.

In 2013, however, Alaska proposed changes to state regulations that would allow hunting of brown bears over bait throughout the Kenai Peninsula, including on the Kenai Refuge. Pet. App. 12, 65. FWS objected to the proposal, explaining that it would lead to "unsustainable harvest levels and human-caused mortality." *Id.* at 12. FWS stated that if Alaska adopted the proposal, "Refuge lands need[ed] to be excluded." C.A. E.R. 377. Alaska nonetheless adopted the proposal in full without excluding refuge lands. Pet. App. 66.

FWS acted promptly to prevent Alaska's new regulations from taking effect within the Kenai Refuge. FWS closed the refuge to brown bear hunting in 2013 and 2014 because of declining brown bear numbers on the Kenai Peninsula. See Pet. App. 12. And in 2016, after notice and comment, FWS issued a final rule (the Kenai Rule) codifying a brown bear baiting prohibition

within the Kenai Refuge. 81 Fed. Reg. 27,030, 27,036-27,037 (May 5, 2016); see 50 C.F.R. 36.39(i)(5)(ii).

FWS determined that the brown bear baiting prohibition was "necessary to meeting [the Service's] mandates under ANILCA to conserve healthy populations of wildlife in their natural diversity on the Refuge, to meet the Refuge's Wilderness purposes, and to meet the Refuge's purpose [of] providing compatible wildlife-oriented recreational opportunities." 81 Fed. Reg. at 27,036. FWS explained that Alaska's recent liberalization of brown bear hunting rules had caused a "rapid reduction of the Kenai Peninsula brown bear population." *Ibid.* And because Kenai brown bears "have one of the lowest reproductive potentials of any North American mammal," FWS reasoned that a "cautious approach to management of Kenai Peninsula brown bears is scientifically warranted." *Id.* at 27,037. While FWS acknowledged that *black* bear baiting is a compatible use of the Kenai Refuge, it explained that black bears do not raise the same conservation concerns because they "occur in much higher densities," have "higher reproductive potential," and "are less susceptible to over-harvest." *Ibid.* Finally, FWS found that allowing brown bear baiting would likely "condition[] brown bears to human foods," thereby "increas[ing] potential for human-bear conflicts" and threatening "public safety." *Ibid.*

c. After issuing the Kenai Rule, FWS issued a separate rule (the Refuges Rule) that generally prohibited Alaska's predator-control programs on all federal wildlife refuges in Alaska, unless such programs were "determined necessary to meet refuge purposes." 81 Fed. Reg. 52,248, 52,252 (Aug. 5, 2016). Alaska's predator-control programs—which included "aerial shooting of

wolves or bears" and "trapping of wolves by paid contractors," *id.* at 52,251—aimed to reduce predator populations to increase the abundance of prey species for human consumption. See *id.* at 52,251-52,252. The Refuges Rule was based on a determination that limiting predator control was necessary to fulfill FWS's duty under ANILCA to maintain wildlife populations "in their natural diversity." *Id.* at 52,257.

As part of its limitation on predator control, the Refuges Rule "prohibit[ed] baiting of brown bears for general sport hunting on all [refuges] in Alaska." 81 Fed. Reg. at 52,262. FWS did not base that general prohibition on data showing that baiting would create conservation concerns on any particular refuge, and FWS acknowledged that the effects of baiting would "vary from region to region." *Ibid.* Rather, FWS explained that given its legal mandate to "maintain[] natural diversity and healthy ecosystems," it had determined to "proactively preclud[e] the loss of diversity and degradation of ecosystem functions by prohibiting this [baiting] practice on [federal wildlife refuges] Statewide." *Ibid.*

In 2017, Congress passed and the President signed into law a joint resolution under the Congressional Review Act (CRA), Pub. L. No. 104-121, 110 Stat. 868 (5 U.S.C. 801-808), abrogating the Refuges Rule. The joint resolution states that Congress "disapproves" the Refuges Rule and that the rule "shall have no force and effect." J. Res. of Apr. 3, 2017, Pub. L. No. 115-20, 131 Stat. 86. The joint resolution does not address the Kenai Rule, and Congress did not pass any other joint resolution disapproving that rule.

3. Alaska and Safari Club International filed suits raising several challenges to the Kenai Rule, including

a claim that the rule is inconsistent with ANILCA. Pet. App. 14. The suits were consolidated, and the parties cross-moved for summary judgment. *Id.* at 74-75.

The district court granted summary judgment to the government on nearly all of the plaintiffs' claims, including the ANILCA claim. Pet. App. 56-135.[1] The court rejected the plaintiffs' contention that the Kenai Rule violates ANILCA by "tak[ing] over the State's role in managing wildlife on public lands in Alaska." *Id.* at 95-96. The court explained that ANILCA "specifically contemplates that federal law will apply to [federal wildlife refuges], and where there is a clear conflict between federal and state law, the federal law controls." *Id.* at 103.

4. The court of appeals affirmed. Pet. App. 1-43. The court began by acknowledging that "the Alaska Statehood Act transferred administration of wildlife from Congress to the State." *Id.* at 16. But the court noted that "this 'transfer [did] not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife' like the Kenai Refuge, which remain under federal control." *Ibid.* (quoting § 6(e), 72 Stat. 340-341). Moreover, the court explained that under ANILCA, "hunting within the Kenai Refuge is subject to federal law, including any regulations im-

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[1] Among the claims on which the court granted summary judgment to the government were challenges to hunting restrictions on the Skilak Wildlife Recreation Area. Pet. App. 134. Those claims are not at issue in the petition here. See Pet. 12 n.6. The only claim on which the court granted summary judgment to the plaintiffs was a challenge under the National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852, see Pet. App. 134, which is likewise not at issue in the petition here.

posed by the Secretary of the Interior under its delegated statutory authority to manage federal lands." *Id.* at 17. Accordingly, the court reasoned, where (as here) "Alaska state law conflicts with federal hunting regulations, the latter control under standard principles of conflict preemption." *Ibid.*

The court of appeals also rejected Alaska's alternative argument that "even if FWS can restrict State-approved hunting on federal lands in Alaska, the 2017 congressional joint resolution canceling the Refuges Rule substantively amended ANILCA * * * such that it voided the Kenai Rule." Pet. App. 19. "The first problem for the State," the court observed, "is that the 2017 joint resolution only pertains to the Refuges Rule and does not mention the Kenai Rule." *Id.* at 20. As a result, the court explained, the joint resolution "amends the law only in the sense that FWS cannot manage public lands in Alaska through the Refuges Rule or a new administrative rule that is substantively identical." *Ibid.* The court then determined that FWS is not "still enforcing the Refuges Rule"; "[t]he Kenai Rule is not a 'new rule' relative to the Refuges Rule" because the Kenai Rule is the older of the two rules; and the Refuges Rule and Kenai Rule are not "substantively identical." *Ibid.* Thus, the court held that "the 2017 joint resolution that disapproved of the Refuges Rule does not void the Kenai Rule." *Id.* at 21.

5. The court of appeals denied Alaska's petition for rehearing en banc with no judge requesting a vote on the petition. Pet. App. 137.

ARGUMENT

Alaska renews its contention (Pet. 25-31) that FWS's rule prohibiting brown bear baiting on the Kenai Refuge is inconsistent with ANILCA. The court of appeals

correctly rejected that contention. The court's decision does not conflict with any decision of this Court or another court of appeals. And the case presents no question of exceptional importance. This Court's review is therefore unwarranted.

1. The court of appeals correctly held that FWS has authority to prohibit brown bear baiting on the Kenai Refuge for the purpose of conserving the brown bear population and ensuring public safety, notwithstanding Alaska's desire to permit the practice. See Pet. App. 15-21.

a. The Property Clause empowers Congress to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, Cl. 2. "[T]he 'complete power' that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there." *Kleppe* v. *New Mexico*, 426 U.S. 529, 540-41 (1976) (quoting *United States* v. *San Francisco*, 310 U.S. 16, 30 (1940)). And when Congress enacts legislation under the Property Clause, that "legislation necessarily overrides conflicting state laws under the Supremacy Clause." *Id.* at 543; see *Hunt* v. *United States*, 278 U.S. 96, 100 (1928). "A different rule would place the public domain of the United States completely at the mercy of state legislation." *Kleppe*, 426 U.S. at 543 (citation omitted).

Exercising its Property Clause authority, Congress enacted ANILCA, which "enabled" the Secretary "to protect—if need be, through expansive regulation—'the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska.'" *Sturgeon* v. *Frost*, 139 S. Ct. 1066, 1087 (2019) (quoting 16 U.S.C. 3101(d)). Those environmental values include

"the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation." 16 U.S.C. 3101(b).

ANILCA specifically requires the Secretary to manage the Kenai Refuge "to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, * * * bears." § 303(4)(B)(i), 94 Stat. 2391. The Secretary "may not permit any use" of the Kenai Refuge "unless such use * * * is compatible with the purposes of the refuge," including conservation of bear populations. § 304(b), 94 Stat. 2393. And "[t]he Secretary shall prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that activities carried out under any use * * * are so compatible." *Ibid.*

Similarly, the Improvement Act directs the Secretary to "provide for the conservation of fish, wildlife, and plants, and their habitats within the [National Wildlife Refuge] System," which includes the Kenai Refuge. 16 U.S.C. 668dd(a)(4)(A). And the Improvement Act makes clear that the Secretary may not "initiate or permit a new use of a refuge or expand * * * an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." 16 U.S.C. 668dd(d)(3)(A)(i).

Pursuant to the foregoing authorities, FWS promulgated a regulation prohibiting brown bear baiting on the Kenai Refuge. 81 Fed. Reg. at 27,036-27,037. In so doing, FWS reasonably determined—in findings that Alaska no longer challenges—that the prohibition would advance conservation and public-safety goals that Congress required FWS to prioritize. *Ibid.* FWS's prohibition of brown bear baiting prevails over Alaska's

authorization of brown bear baiting "under standard principles of conflict preemption." Pet. App. 17.

b. Alaska's contrary arguments lack merit. Pet. 25-31.

i. Alaska principally relies (Pet. 25) on 16 U.S.C. 3202(a), which states that "[n]othing in [ANILCA] is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands." See also Safari Club Int'l Resp. Br. 9 (relying on this provision). But before ANILCA, Alaska lacked exclusive authority to manage wildlife on federal wildlife refuges in the State. As noted above, although the Alaska Statehood Act transferred certain wildlife-management functions to the State, the Act excluded federal wildlife refuges—including the Kenai National Moose Range—from that transfer. See § 6(e), 72 Stat. 340-341; *United States* v. *Alaska*, 423 F.2d 764, 768 (9th Cir.), cert. denied, 400 U.S. 967 (1970). That exclusion preserved not only federal ownership, but also federal "administrative jurisdiction" over federal refuge lands. S. Rep. No. 1929, 81st Cong., 2d Sess. 13-14 (1950).

Moreover, to the extent that Alaska has concurrent authority to regulate wildlife on federal refuge lands in the State, standard preemption principles establish that federal regulation of wildlife on federal land "necessarily overrides conflicting state" regulation. *Kleppe*, 426 U.S. at 543. Indeed, ANILCA recognizes as much by declaring that "[t]he taking of fish and wildlife" on refuge lands "shall be carried out *in accordance with the provisions of this Act* and other applicable State *and Federal* law." 16 U.S.C. 3202(c) (emphasis added). Thus, FWS's prohibition of brown bear baiting on the

Kenai Refuge overrides and preempts Alaska's authorization of such baiting on the refuge.

Alaska ultimately concedes that FWS can limit "*where* and *when* hunting may occur" on a federal wildlife refuge, Pet. 26, and that FWS can even "close[]" such a refuge to hunting altogether when "wildlife populations [are] facing a conservation concern," Pet. 21; see Pet. 26-27. But Alaska maintains (Pet. 27) that FWS cannot limit "how hunting will occur" on such refuges. See also Pet. 22. Nothing in ANILCA supports Alaska's distinction. To the contrary, the Act expressly empowers the Secretary to "prescribe such regulations and impose such terms and conditions" on uses of federal wildlife refuges "as may be necessary and appropriate to ensure that activities carried out under any use" are "compatible" with conservation goals. § 304(b), 94 Stat. 2393. That broad authorization encompasses rules governing the *manner* of hunting—which (as this case shows) can directly affect the conservation of wildlife populations. Nor does Alaska explain why Congress would have empowered the Secretary to prohibit hunting on a refuge altogether, but withheld authority to impose a lesser restriction like the brown bear baiting prohibition here. Alaska's all-or-nothing interpretation would require the federal government to regulate more than necessary in order to protect wildlife—a result at odds with "the cooperative nature of ANILCA." Pet. 27.

Alaska repeatedly refers to (Pet. i, 1, 2, 3, 16, 18, 24) the court of appeals' statement that ANILCA delegates to the Secretary "plenary authority to protect the value of public lands within Alaska." Pet. App. 18. But the cited statement appears in a sentence that quotes this Court's recognition that ANILCA "enable[s]" the Sec-

retary "to protect—if need be, through *expansive regulation*—'the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska.'" *Sturgeon*, 139 S. Ct. at 1087 (quoting 16 U.S.C. 3101(d)) (emphasis added); see Pet. App. 18. The court of appeals did not suggest that it was adopting a broader view of the Secretary's power than this Court did in *Sturgeon*. In any event, this Court "reviews judgments, not statements in opinions," *California* v. *Rooney*, 483 U.S. 307, 311 (1987) (per curiam) (citation omitted), and the court of appeals' judgment upholding the Kenai Rule is correct regardless of the precise limits of the Secretary's authority under ANILCA.

ii. Alaska additionally errs in asserting (Pet. 27-31) that Congress's 2017 joint resolution abrogating the Refuges Rule likewise invalidates the Kenai Rule. The CRA gives Congress a specified time period to enact a joint resolution disapproving an agency rule. See 5 U.S.C. 802(a). If Congress passes and the President signs such a joint resolution, the agency's rule "shall not take effect (or continue)." 5 U.S.C. 801(b)(1). Once an agency's rule has been invalidated by joint resolution, the agency may not reissue the same rule "in substantially the same form," or "a new rule that is substantially the same" as the invalidated rule, "unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." 5 U.S.C. 801(b)(2).

Here, Congress passed and the President signed a joint resolution stating that Congress "disapproves" the Refuges Rule and that the Refuges Rule "shall have no force or effect." 131 Stat. 86. But the joint resolution "does not mention the Kenai Rule." Pet. App. 20. And the CRA makes clear that "[i]f the Congress does not

enact a joint resolution of disapproval * * * respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule." 5 U.S.C. 801(g). Accordingly, because Congress enacted no joint resolution respecting the Kenai Rule, the Court may not "infer any intent of the Congress * * * with regard to such rule." *Ibid.*

In addition, Congress's joint resolution does not affect the Kenai Rule because the Kenai Rule is not a "reissued or new rule" that is "substantially the same" as the Refuges Rule. 5 U.S.C. 801(b)(2). The Kenai Rule does not qualify as "reissued or new" in relation to the Refuges Rule because the Service issued it *before* the Refuges Rule. *Ibid.* And in any event, the Kenai Rule is not "substantially the same" as the Refuges Rule. *Ibid.* Whereas "[t]he Refuges Rule blanketly excluded the baiting of brown bears and State predator control programs from all national wildlife refuges in Alaska," the Kenai Rule "only forbids baiting of brown bears in the Kenai Refuge." Pet. App. 20. And as explained above, FWS based the two rules on different data and considerations. Compare 81 Fed. Reg. at 27,036-27,037 (basing the Kenai Rule on data specific to the Kenai Peninsula indicating that baiting would increase mortalities and jeopardize conservation of the geographically isolated Kenai brown bear population), with 81 Fed. Reg. at 52,252-52,253 (basing the Refuges Rule on FWS's determination that predator-control programs conflict with the Service's duty under ANILCA to manage wildlife populations "in their natural diversity").

Contrary to Alaska's submission (Pet. 30), the decision below does not "eviscerat[e]" Congress's joint resolution disapproving the Refuges Rule. That resolution functioned exactly as Congress intended by annulling

the statewide Refuges Rule and prohibiting FWS from reissuing that rule "in substantially the same form" or issuing "a new rule that is substantially the same" as the Refuges Rule. 5 U.S.C. 801(b)(2); see Pet. App. 20.

2. Alaska concedes (Pet. 18) that the decision below does not conflict with the decision of any other court of appeals. Alaska errs in asserting (*ibid.*) that a direct "circuit split is not possible" on an issue concerning the interpretation of ANILCA, as such issues can and do arise in the D.C. Circuit. See, *e.g.*, *Southeast Conference* v. *Vilsack*, 684 F. Supp. 2d 135, 142-145 (D.D.C. 2010). In any event, the Improvement Act is a similar statute that applies to federal wildlife refuges nationwide. And the Tenth Circuit has interpreted that statute in a manner that fully accords with the Ninth Circuit's interpretation of ANILCA here.

In *Wyoming* v. *United States*, 279 F.3d 1214 (10th Cir. 2002), FWS refused to permit Wyoming to vaccinate elk against a certain disease on a federal wildlife refuge, on the ground that the "biosafety and efficacy" of the vaccine "remain[ed] unproven." *Id.* at 1218. Wyoming claimed that FWS's refusal violated the Improvement Act, which (similar to ANILCA) directs FWS to "ensure that the biological integrity, diversity, and environmental health of the [National Wildlife Refuge] System are maintained," 16 U.S.C. 668dd(a)(4)(B), and authorizes FWS to prescribe regulations governing uses of federal wildlife refuges "whenever [the Secretary] determines that such uses are compatible with the major purposes for which [refuge] areas were established," 16 U.S.C. 668dd(d)(1)(A). At the same time, the Improvement Act (also similar to ANILCA) contains a saving clause stating that "[n]othing in this Act shall be

construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System." 16 U.S.C. 668dd(m).

The Tenth Circuit rejected Wyoming's Improvement Act claim, holding that "the saving clause does not deny the FWS, where at odds with the State, the authority to make a binding decision bearing upon 'biological integrity, diversity, and environmental health of the System.'" *Wyoming*, 279 F.3d at 1234 (quoting 16 U.S.C. 668dd(a)(4)(B)). "If we construed the [Improvement Act] to grant the State of Wyoming the sweeping power it claims," the court reasoned, "the State would be free to manage and regulate the [federal wildlife refuge] in a manner the FWS deemed incompatible with the [refuge's] purpose." *Ibid.* Accordingly, the court concluded, "Congress intended ordinary principles of conflict preemption to apply in cases such as this," and "federal management and regulation of federal wildlife refuges preempts state management and regulation of such refuges to the extent the two actually conflict." *Ibid.* The Tenth Circuit's holding thus tracks the court of appeals' holding here that when "Alaska state law conflicts with federal hunting regulations, the latter control under standard principles of conflict preemption." Pet. App. 17.

3. Finally, Alaska asserts that this case "raises a question of exceptional importance," Pet. 18 (emphasis omitted), because it involves "the delicate balance of power between federal and state sovereigns," Pet. 19. Alaska's assertion is mistaken. Alaska challenges FWS's prohibition of a single hunting practice (brown bear baiting) on a single federal refuge (Kenai Refuge).

And while brown bear baiting may be a primarily "local issue" when it occurs on state land, Pet. 22, it implicates federal interests when (as here) it occurs on federal land.

Moreover, the Kenai Rule does not prevent Alaska from permitting hunting for brown bears *without* bait in most areas of the Kenai Refuge, or permitting hunting brown bears over bait in *other* refuges. See 50 C.F.R. 36.32(c)(1). Nor has the Kenai Rule impeded Alaska from reaching its brown bear harvest targets for the Kenai Peninsula. In fact, notwithstanding the Kenai Rule, "in September 2022, the State's wildlife management agency issued an emergency order to close the Kenai Peninsula brown bear hunting season because the number of bears taken had exceeded the maximum number allowed." Pet. 22 n.8.

More broadly, FWS and Alaska have long managed hunting on federal wildlife refuges together pursuant to their 1982 memorandum of understanding. See Pet. App. 58-59. That framework exemplifies "cooperative federalism," *California* v. *United States*, 438 U.S. 645, 650 (1978), under which both state and federal interests are respected. Especially given that tradition of collaboration, there is no basis for this Court's intervention in this isolated dispute over a specific hunting practice occurring on a particular federal refuge.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
TODD KIM
Assistant Attorney General
RACHEL HERON
KEVIN W. MCARDLE
Attorneys

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