No. 24-622

In the Supreme Court of the United States

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,
PETITIONER

v.

DOUG BURGUM, SECRETARY OF THE INTERIOR,
ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

The Michigan Indian Land Claims Settlement Act, Pub. L. No. 105-143, 111 Stat. 2652, provides that the specific Indian tribe petitioner here (Tribe), under Section 108(c) of the Act, may use the interest and other income of the Self-Sufficiency Fund (Fund) established by the Act for only five specified purposes, including for the "consolidation or enhancement of tribal lands." § 108(c)(5), 111 Stat. 2661. The Act expressly provides that the Tribe "shall administer the Fund in accordance with the provisions of [Section 108]." § 108(a)(2), 111 Stat. 2661. Section 108(f) of the Act further provides that "[a]ny lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary [of the Interior] for the benefit of the tribe." § 108(f), 111 Stat. 2661-2662. The questions presented are:

1. Whether Section 108(f) of the Act requires the Secretary to take land acquired by the Tribe into trust if the Tribe unlawfully used interest from the Fund to acquire that land for purposes other than the limited ones authorized by Section 108(c).

2. Whether the purchase of any parcel of land by the Tribe automatically qualifies as an "enhancement of tribal lands" under Section 108(c)(5) of the Act, even where the parcel is a significant distance from, and would not have any relevant effect on, those lands.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is reported at 25 F.4th 12. The opinion of the district court (Pet. App. 33a-92a) is reported at 442 F. Supp. 3d 53. Subsequent opinions of the court of appeals (Pet. App. 95a-108a) and district court (Pet. App. 109a-142a), are, respectively, unreported but available at 2024 WL 3219481, and reported at 659 F. Supp. 3d 33.

JURISDICTION

The judgment of the court of appeals was entered on June 28, 2024. On September 18, 2024, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including November 25, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case concerns an attempt by the Sault Ste. Marie Tribe of Chippewa Indians (Tribe), which has tribal lands in the Upper Peninsula of Michigan, to compel the Secretary of the Interior to take title to a distant parcel of land near Detroit into trust for the Tribe's benefit as part of the Tribe's plan to develop the parcel for a gaming casino. Pet. App. 2a-3a.

The Michigan Indian Land Claims Settlement Act (Michigan Act or Act), Pub. L. No. 105-143, 111 Stat. 2652, governs a trust fund established for the Tribe's benefit, known as the Self-Sufficiency Fund, and permits the Tribe to use the fund's interest and other income in only five specified ways. § 108(a)(1) and (c), 111 Stat. 2660-2661. The Act also provides that "[a]ny lands acquired using amounts from interest or other income" in the Fund "shall be held in trust by the Secretary [of the Interior (Secretary)] for the benefit of the tribe." § 108(f), 111 Stat. 2661-2662. The court of appeals upheld the Secretary's determinations that (1) the Act requires the Secretary to take land into trust only if the Tribe has lawfully acquired the land under the Act with interest or other income of the Fund, Pet. App. 7a-16a, and (2) the Tribe did not lawfully acquire the relevant land under Section 108(c)(5) of the Act, *id.* at 16a-22a.

1. In 1836, the United States entered a treaty with Ottawa Nation and Chippewa Nation. Treaty of Washington, Mar. 28, 1836, 7 Stat. 491. That treaty provided for the cession of land to the United States by "the Ottawa with respect to the lower peninsula" of Michigan and by "the Chippewa" with respect to "the upper peninsula" of Michigan. Michigan Act § 102(a)(3), 111 Stat. 2653 (congressional finding). The petitioner tribe in this case "is the modern day political organization of the

Chippewa bands which [historically] inhabited the eastern portion of the Upper Peninsula of Michigan." *Sault Ste. Marie Tribe of Chippewa Indians* v. *United States*, 576 F. Supp. 2d 838, 840 (W.D. Mich. 2008) (quoting declaration by the Tribe's chairman).

In 1971, the Indian Claims Commission determined, in consolidated cases filed by various Michigan tribes, that the 1836 "Treaty was unconscionable and ordered the United States to pay these tribes more than $10 million" because, the Commission found, the treaty provided for only 15% of the fair value of the ceded lands. Pet. App. 3a (citing *Bay Mills Indian Cmty.* v. *United States*, 26 Ind. Cl. Comm. 538, 542, 560 (1971)). The relevant tribes disagreed about how to divide and distribute the funds, however, and payment of the Commission's judgment was delayed. *Ibid.* The Secretary "held [the funds] in trust * * * for the beneficiaries" pending a decision on how to distribute them. H.R. Rep. No. 352, 105th Cong., 1st Sess. 8 (1997).

The tribes and the United States ultimately negotiated a compromise, which resulted in the Michigan Act. Pet. App. 4a. In 1997, Congress enacted the Act "to provide for the fair and equitable division of the [Commission's] judgment funds among [petitioner and four other Indian tribes] and to provide the opportunity for the tribes to develop plans for the use or distribution of their share of the funds." Michigan Act § 102(b), 111 Stat. 2653; see § 104, 111 Stat. 2653-2654 (specifying the division of funds).

Section 108 of the Act governs the manner in which petitioner's portion of the judgment funds must be used. § 105(a)(3), 111 Stat. 2655. Section 108 requires that the Tribe, through its board of directors, "establish a trust fund for the benefit of the [Tribe]," "known as the 'Self-

Sufficiency Fund,'" to hold both the "principal" of the Fund (including the Tribe's "share of the [Commission] judgment funds") and the "interest and other investment income" of the Fund. § 108(a)(1) and (c), 111 Stat. 2660-2661. The Act provides that "[t]he board of directors shall be the [Fund's] trustee," which "shall administer the Fund in accordance with the provisions of [Section 108]." § 108(a)(2), 111 Stat. 2661. The Act further provides that, once the Secretary had transferred to the Tribe the relevant judgment funds (which the Secretary "had been holding in trust," Pet. App. 155a), "the Secretary shall have no trust responsibility for the investment, administration, or expenditure of the principal or income of the [Fund]" and the Secretary's approval "shall not be required" "for any payment or distribution from the principal or income of the [Fund]." § 108(e)(2), 111 Stat. 2661.

With respect to the Fund's principal, the Act provides that the principal "shall be used exclusively for investments or expenditures" that "the board of directors determines" (a) "are reasonably related to" "economic development beneficial to the tribe" or the "development of tribal resources"; (b) "are otherwise financially beneficial to the tribe"; or (c) "will consolidate or enhance tribal landholdings." § 108(b)(1), 111 Stat. 2661. "Any lands acquired using amounts" from the Fund "shall be held as Indian lands are held." § 108(b)(4), 111 Stat. 2661.

The Act's provision governing the Fund's interest and other income, unlike its provision governing the Fund's principal, does not permit expenditures whenever "the board of directors determines" that they satisfy certain criteria, § 108(b)(1), 111 Stat. 2661. Section 108(c) of the Act instead provides that the Fund's interest

and other income "shall be distributed" in only five ways: (1) as an addition to the Fund's principal; (2) as a dividend or (3) as a per capita payment to tribal members; (4) for educational, social welfare, health, cultural, or charitable purposes which benefit the Tribe's members; or (5) "for consolidation or enhancement of tribal lands." § 108(c), 111 Stat. 2661. Section 108(f) then provides that "[a]ny lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe." § 108(f), 111 Stat. 2661-2662.

2. The Tribe operates multiple casinos on its Indian lands in the Upper Peninsula of Michigan. Pet. App. 38a. But according to the Tribe, its revenue from those casinos has dropped due to "competition from the Michigan State Lottery and new casinos in the Lower Peninsula." *Ibid.* (citation omitted). "[T]he Tribe's board [therefore] approved a plan to open a casino in the Lower Peninsula." *Id.* at 39a. Because the Indian Gaming Regulatory Act (IGRA), 18 U.S.C. 1166-1168, 25 U.S.C. 2701 *et seq.*, under certain circumstances permits an Indian tribe to operate a gaming casino on "Indian lands," 25 U.S.C. 2703(8), 2710(d)(1), such as lands that the United States holds in trust for the tribe's benefit, 25 U.S.C. 2703(4)(B); cf. 25 U.S.C. 2719(a) and (b)(1)(B)(i), the Tribe's board of directors in 2012 authorized the purchase of 71 acres of land (the Sibley Parcel) in the Lower Peninsula near Detroit and carried out a plan to compel "the Government to take [that] land * * * into trust." Pet. App. 39a; see *id.* at 3a, 5a.

The Tribe applied to the Department of the Interior (Department or Interior) "to take [the Sibley Parcel] into trust" under Section 108(f) of the Michigan Act. Pet. App. 39a. The Tribe informed the Department that

it would use "income" from the Self-Sufficiency Fund to effectuate the parcel's purchase and "assured the Department that the purchase was a proper expenditure of Fund income" under the Act, *ibid.*, because the funds would be used, as relevant here, for the "enhancement of tribal lands," Michigan Act § 108(c)(5), 111 Stat. 2661. The Tribe argued that the parcel "would enhance its Upper Peninsula lands"—which are located more than 250 miles away from the parcel—on the theory that the parcel would "allow for economic development" that could "generate revenue" that the Tribe might then "use[] to enhance lands in the Upper Peninsula." Pet. App. 151a-152a & n.23. The Tribe was given the opportunity but failed to "offer[] any evidence of its plans to use the gaming revenue to benefit its existing lands or its members," and "the Tribe's legal counsel acknowledged they did not believe the Tribe could provide such evidence." *Id.* at 146a & n.4, 152a. The Department denied the Tribe's request. *Id.* at 145a-152a, 153a-163a.

3. In 2018, the Tribe filed this action for judicial review of the Department's decision in district court under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* See Pet. App. 34a. The district court granted summary judgment to the Tribe, *id.* at 33a-92a, based on its view that (a) Section 108(f) of the Michigan Act requires the Secretary to take into trust any land that the Tribe acquires using the income from the Fund, regardless of whether the Tribe violated the Act by using that income for the acquisition, *id.* at 45a-65a, and, in any event, (b) the Tribe lawfully acquired the Sibley Parcel under Section 108(c)(5) as an "enhancement of tribal lands," *id.* at 65a-79a (citation omitted).

4. In 2022, the court of appeals reversed and remanded. Pet. App. 1a-31a.

a. The court of appeals determined that the Michigan Act requires the Secretary to take land into trust only if the Tribe has lawfully acquired that land under Section 108(c) of the Act, and that the Secretary's "authority to take land into trust under Section 108(f) necessarily includes the authority to determine whether the lands have been lawfully acquired," Pet. App. 8a. See *id.* at 7a-16a.

The court of appeals observed that, "[a]s the Tribe acknowledge[d]," Section 108(c) lists the only five "permissible uses for Fund interest." Pet. App. 9a. The court also observed that, under Section 108(f), "*only* lands acquired using Fund interest must be taken into trust." *Ibid.* The court thus reasoned that the Act contemplates that "land acquired for a use not listed in Section 108(c)" is "not * * * properly acquired with Fund interest" and does not implicate the Secretary's obligation to "take it into trust under Section 108(f)." *Ibid.*

The court of appeals found "[n]othing in the Act [that] obliges the government to assume a trusteeship" over land acquired by the Tribe "that would further a violation of the law." Pet. App. 12a. The court observed that where, as here, "a statute establishes a trust obligation of the United States to an Indian tribe, the government acts 'not as a private trustee but pursuant to its sovereign interest in the execution of federal law.'" *Id.* at 8a (quoting *United States* v. *Jicarilla Apache Nation*, 564 U.S. 162, 165 (2011)). The court also observed that that view was "reinforce[d]" by "background principles drawn from the common law of trusts," which show that even a non-government trustee has a duty not to give effect to a trust that "'is unlawful or contrary to public policy.'" *Id.* at 12a (citation omitted). Thus, the court stated, "[t]o respect the statutory limits on its

trust obligation, Interior must have the authority to verify that the land was legitimately acquired with Fund interest for the limited uses detailed in Section 108(c)." *Id.* at 10a. That reading, the court explained, properly "allows Interior to manage its legal obligations comprehensively and to avoid unnecessary conflicts" under an "elaborate patchwork" of "interrelated" statutory and regulatory provisions, including those concerning tribal gaming activities under IGRA. *Id.* at 10a-11a.

b. The court of appeals further determined that the Tribe's acquisition of the Sibley Parcel was not lawful under Section 108(c)(5) of the Act because "[t]he mere acquisition of additional land, without any demonstration that the acquisition improves the quality or value of existing tribal lands, does not constitute an 'enhancement of tribal lands' within the plain meaning of [that provision]," Pet. App. 16a. See *id.* at 16a-22a. The court explained that the word "'[e]nhancement' typically refers to a qualitative improvement" in something. *Id.* at 16a. The court found the statutory context here "confirm[s]" that meaning in Section 108(c)(5) because, "[i]n the context of real property, 'enhancement' refers to a qualitative improvement, not a quantitative increase," and because, "[i]n other statutes involving Indian lands," Congress has repeatedly "used 'enhancement' to refer to qualitative improvements." *Id.* at 16a-18a. The court added that "Congress frequently lists the 'acquisition' and 'enhancement' of property as separate [statutory] terms" in "varied contexts" and that, "in statutes addressing tribal land specifically, Congress commonly uses 'acquire' when granting general authority to purchase land." *Id.* at 18a.

The court of appeals also concluded that the Tribe's argument that the "'enhancement'" of tribal lands under

Section 108(c)(5) includes "any acquisition or increase in landholdings" fails to account properly for all of Section 108(c)(5)'s text, which permits the Tribe to use Fund interest for "the 'consolidation or enhancement of tribal lands.'" Pet. App. 19a. The court noted that "[t]he Tribe concedes" that a "consolidation" of tribal lands "refers to the acquisition of land or land interests" for the purpose of "join[ing] two parcels under tribal ownership" and, perhaps, "combin[ing] the fractionated ownership interests in a parcel of tribal land." *Ibid.* The court thus observed that "adopt[ing] the Tribe's reading of 'enhancement' to include any acquisition of land" would mean that "'consolidation' would do no independent work in the statute." *Id.* at 19a-20a.

c. Judge Henderson dissented. Pet. App. 23a-31a. Judge Henderson did not dispute the majority's determination that the Tribe's acquisition of the Sibley Parcel was not lawful under Section 108(c)(5). She instead concluded that Section 108(f) by its terms requires the Secretary to take land into trust whenever the Tribe acquires land using Fund interest, regardless of whether the Tribe lawfully acquired the land under the Act. *Ibid.*

5. On remand, the district court addressed other contentions not relevant here and upheld the Department's decision on summary judgment. Pet. App. 109a-142a. The court of appeals affirmed. *Id.* at 95a-108a.

ARGUMENT

The Tribe contends (Pet. 27-31) that the court of appeals erred in holding that the Michigan Act allows the Secretary to determine whether the Tribe lawfully acquired land using interest in the Fund under Section 108(c) of the Act when the Secretary determines whether the Act requires the United States to take that land into trust. The Tribe asserts (Pet. 19-27) that that question

warrants certiorari because it purportedly will have far-reaching consequences. The Tribe further contends (Pet. 31-34) that this Court should review the court of appeals' independent determination that the Tribe did not lawfully acquire the Sibley Parcel as an "enhancement of tribal lands" under Section 108(c)(5) of the Act. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Nor does the decision otherwise warrant review, because it involves the interpretation of only one statutory provision concerning one Indian tribe. The Court should deny certiorari.

1. The court of appeals determined that the Michigan Act requires the United States to take land acquired by the Tribe into trust only if the Tribe has lawfully acquired that land with Fund interest or other income under Section 108(c), and that the Secretary's "authority to take land into trust under Section 108(f) necessarily includes the authority to determine whether the lands have been lawfully acquired," Pet. App. 8a. See *id.* at 7a-16. That determination is correct and warrants no further review.

a. Section 108(c) of the Michigan Act governs the Tribe's use of the "interest and other investment income" of the Act's Self-Sufficiency Fund and requires that such income "shall be distributed" in only five specified ways. § 108(c), 111 Stat. 2661; see pp. 4-5, *supra*. "As the Tribe acknowledge[d]" below, those five statutory uses "necessarily exclude[] other uses." Pet. App. 9a. Thus, if the Tribe acquires land "for a use not listed in Section 108(c)," that land "would not be properly acquired with Fund interest." *Ibid.* Moreover, Congress expressly directed that the Tribe's "board of directors * * * shall administer the Fund in accordance with the

provisions of [Section 108]." § 108(a)(2), 111 Stat. 2661. The Act thus reflects that, if the Tribe acquires land with Fund interest (or other income), the acquisition must qualify as one of the statutory uses specified by Section 108(c).

Section 108(f) builds on that statutory premise. Section 108(f) provides that "[a]ny lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe." § 108(f), 111 Stat. 2661-2662. And because any lands so acquired must have been acquired for one of the purposes in Section 108(c), the Act imposes an obligation on the Secretary to take land into trust only if the Tribe has *lawfully* acquired the land with Fund "interest or other income" under Section 108(c).

Statutory context confirms that conclusion. Section 108(f) specifies the circumstances under which the United States must establish a trust relationship with the Tribe with respect to the holding of particular land. Because that "trust obligation[] of the United States" to the Tribe is "established and governed by statute," "the Government acts [under Section 108(f)] not as a private trustee but pursuant to its sovereign interest in the execution of federal law." *United States* v. *Jicarilla Apache Nation*, 564 U.S. 162, 165 (2011). In fulfilling that role, the United States as sovereign can ensure that it does not itself, by taking land into trust, "further a violation of [federal] law" arising from the Tribe's own (unlawful) acquisition of such land. Pet. App. 12a. That conclusion not only reflects the nature of the government's statutory trust duties to Indian tribes; it also is consistent with more general "background principles drawn from the common law of trusts" under which

even a nongovernmental trustee has a duty not to give effect to a trust that is "'unlawful or contrary to public policy'" and, thus, "'invalid.'" *Ibid.* (citation omitted).

The Tribe identifies no sound reason why Congress would have intended to limit the Tribe's use of Fund interest and income to five specific uses in Section 108(c) and expressly require the Tribe to comply with Section 108, yet simultaneously require the Secretary to take land into trust where the Tribe has acquired it in violation of Section 108(c). Under the Tribe's reading of the Act, the Tribe could acquire land anywhere in the United States by unlawfully using Fund interest or other income and, by virtue of its own unlawful action, compel the United States to take the land into trust for the Tribe's benefit. The Tribe, for instance, could unlawfully acquire land near Atlanta, Portland, or Washington, D.C. for a gaming casino—or could even acquire land near another Indian tribe's successful casino—and then compel the government to take that land into trust to facilitate the Tribe's plan to use the land for its own gaming operations. That bizarre result underscores the flaws in the Tribe's position.

b. The Tribe's disagreement with the court of appeals' decision does not rest on a fully developed textual argument, much less one that takes into account the full statutory context of the Michigan Act's relevant provisions. Pet. 27-31. The Tribe instead contends (*ibid.*) that the court of appeals' decision is incorrect for four discrete high-level reasons, none of which has merit.

First, the Tribe argues (Pet. 27) that the court of appeals' decision conflicts with "numerous decisions" of this Court "limiting agencies to congressionally delegated authority." There is no such conflict. The central question in this case is under what circumstances the

Michigan Act requires the Secretary to take land into trust for the Tribe. If, as the court of appeals correctly held, the Act requires the Secretary to do so only if the Tribe has lawfully acquired the land with Fund interest or other income under Section 108(c), the Secretary "necessarily" must have the related "authority to determine whether the lands have been lawfully acquired" in order to determine if the Act requires him to take the land into trust. Pet. App. 8a. Nothing in the decisions concerning congressional delegations of authority that the Tribe cites (Pet. 27) undermines that common-sense conclusion.

Second, the Tribe argues (Pet. 28-29) that the panel's reference to "general trust responsibility principles" conflicts with "this Court's precedents regarding the federal government's trust obligations to Indian tribes," which reflect that those obligations "are 'defined and governed by statutes rather than the common law.'" Pet. 28 (quoting *Jicarilla Apache Nation*, 564 U.S. at 173-174). But the fact that trust obligations in this context are governed by statute does not undermine the court of appeals' interpretation of the Act. The court specifically focused on the fact that the "statute [here] establishes a trust obligation of the United States to an Indian tribe" that embodies the government's "'sovereign interest in the execution of federal law.'" Pet. App. 8a (quoting *Jicarilla Apache Nation*, 564 U.S. at 165). The court's observation that the "common law of trusts reinforce[d]" its *interpretation of the Act* as "not requir[ing] Interior to take land into trust that the Tribe acquired contrary to law," *id.* at 12a, is thus likewise rooted the government's trust duties in the federal statute, not in an application of freestanding provisions of common law. The court simply observed that even a

non-government trustee has a duty not to give effect to a trust that "is unlawful or contrary to public policy." *Ibid.* (citation omitted).

The Tribe errs in suggesting that language in Section 108 stating that the Tribe's "board of directors shall be the [Fund's] trustee" and that the "Secretary shall have no trust responsibility for the investment, administration, or expenditure of the principal or income of [the Fund]," § 108(a)(2) and (e)(2), 111 Stat. 2661, mean that *only* the Board is "responsible for determining compliance with [Section] 108(c)," Pet. 28. That language simply terminated the Secretary's trust responsibility for managing the relevant judgment funds once the Secretary delivered that money to the Tribe and ensured that the Tribe's board would then manage the Fund as a trustee. See pp. 3-4, *supra*. It does not address the Secretary's separate statutory trust obligations that become relevant when the Secretary is asked to take land acquired by the Tribe into trust. Nor does it suggest that only the Board may consider whether such land was lawfully acquired with Fund interest under Section 108(c), when the Tribe then seeks to have the land taken into trust by the Secretary.

Third, the Tribe argues (Pet. 29-30) that the court of appeals' decision conflicts with "this Court's precedent requiring any statutory infringement of tribal sovereignty to be clear and unequivocal." But the decision does not, as the Tribe suggests (Pet. 30), undermine its "authority to control expenditures of its own money" or its power over tribal property. The court simply concluded that the Act requires *the Secretary* to take land into trust for the Tribe only when that land has been lawfully acquired under the Act and, for that reason, the Secretary must himself be able to determine if the

acquisition was lawful. That determination by the Secretary, ancillary to a Tribe's request for action by the Secretary, simply affects the Secretary's own action; it does not affect prior (even unlawful) action by the Tribe.

Finally, the Tribe suggests (Pet. 30-31) that the court of appeals' decision "defies" this Court's precedent addressing "the Indian canon of construction." But nothing about that interpretive concept suggests that the Act here is properly construed to require the Secretary to take land into trust when the land was acquired by the Tribe in violation of the very same Act. Moreover, if the Tribe is correct that the Secretary must take into trust land unlawfully acquired in violation of the Act, the Secretary would be compelled to further the Tribe's unlawful acquisition of distant lands with which the Tribe has no salient connection in areas where *other* Indian tribes have long resided.[1] No relevant principle of construction requires such a result undermining the sovereign interests of other tribes.

c. The Tribe contends (Pet. 19-27) that this Court should review the court of appeals' conclusion that the Act does not require the Secretary to take land into trust when the land was unlawfully acquired with Fund income under Section 108(c) because that interpretation of the Michigan Act will have far-reaching consequences. That is incorrect and reflects a significant misreading of the court of appeals' decision.

The Tribe, for instance, asserts (Pet. 21-22) that the panel decision "will confine the Tribe to its lands in the Upper Peninsula," which are "not sufficient to support

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[1] Two other Indian tribes from Michigan, respondents in this Court, intervened to oppose the Tribe's attempt to have the Sibley Parcel taken into trust. Pet. ii; Pet. App. 156a. Both waived their right to respond to the certiorari petition.

[the Tribe's] members." But the court of appeals merely determined that the Act does not require the Secretary to take land into trust for the Tribe if the Tribe has *unlawfully* acquired the land with Fund interest or other income under the Act. The Tribe may still acquire land using Fund principal or income—including possibly land in the Lower Peninsula—for, *inter alia*, economic development; the development of tribal resources; financially beneficial investments; educational, social welfare, health, cultural, or charitable purposes benefiting the Tribe's members; and the consolidation or enhancement of tribal lands. See pp. 4-5, *supra* (discussing Section 108(b) and (c)). The Tribe, just like non-tribal entities, may also seek authority to develop such land for casino gaming under state law.[2]

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[2] Michigan has authorized casino gaming under the Michigan Gaming Control and Revenue Act, Mich. Comp. Laws Ann. §§ 432.201 *et seq*. (West 2022), which allows any city with a population of at least 800,000 at the time a gaming license is issued (formerly, Detroit) to have up to three casinos if—as in Detroit—a majority of city voters has approved, and the local legislative body has enacted an ordinance approving, casino gaming, §§ 432.202(*l*), 432.206(1)(a) and (3). See Detroit, Mich., Code § 10-1-3(b) (2019) (authorizing casino gaming). The Tribe was a key organizer of the 1996 statewide referendum that adopted that state law and was the majority owner of the Greektown Casino, one of three non-tribal casinos in Detroit regulated under that law. See *Lac Vieux Desert Band of Lake Superior Chippewa Indians* v. *Michigan Gaming Control Bd.*, 172 F.3d 397, 400 (6th Cir. 1999); *Lac Vieux Desert Band of Lake Superior Chippewa Indians* v. *Michigan Gaming Control Bd.*, No. 2:97-cv-67, 2002 WL 1592596, at *11 (W.D. Mich. July 9, 2002). The Tribe later lost control of the Greektown Casino (now the Hollywood Casino at Greektown) after the casino filed for Chapter 11 bankruptcy and was then sold in 2010 to new owners. *Sault Tribe loses grip on Greektown Casino*, The Sault News (June 29, 2010), https://www.sooeveningnews.com/story/news/2010/06/29/sault-tribe-loses-grip-on/63714638007/.

The Tribe focuses (Pet. 22) on its desire "to have land taken into trust in Michigan's Lower Peninsula," presumably because such action by the Secretary is part of the Tribe's plan to develop a casino near Detroit under IGRA's separate federal authority for Indian tribes to conduct gaming operations. See p. 5, *supra*. But the court of appeals' decision does not necessarily foreclose taking such land into trust in appropriate circumstances. In its second decision in this case, for instance, the panel determined that the Tribe's "proposal to channel five percent of casino profits into approved uses" was insufficient "to meet the requirements of Section 108(c)(4)," Pet. App. 104a—which allows Fund interest or other income to be used "for educational, social welfare, health, cultural, or charitable purposes" benefiting its members, 111 Stat. 2661—because that "small allotment" of profits fell "far short of demonstrating an 'educational, social welfare, health, cultural, or charitable *purpose*[]' for the funds expended to purchase land." Pet. App. 104a-105a (brackets in original). The court expressly left open the possibility that "an economic venture that devoted all or substantially all of its profits to tribal welfare might qualify as an approved expenditure under Section 108(c)(4)." *Id.* at 105a.

This case thus bears little resemblance to other contexts in which "questions of exceptional importance" have warranted review of decisions adversely affecting Indian tribes. Cf. Pet. 22-23. Nor does the case involve any issue as significant as whether a "tribe's reservation has been [properly] diminished or disestablished," Pet. 23. The decision below simply concludes that the Michigan Act does not require the Secretary to take land into trust where the Tribe has unlawfully acquired it under Section 108(c) of the Act.

The Tribe's insistence (Pet. 24-25) that the panel's decision will govern "[m]any" other statutes with "provisions similar to [Section] 108(f) that require Interior to take land into trust under specified conditions" provides no sound basis for review. Any such statute must be interpreted on its own terms, and nothing in the court of appeals' decision here purports to interpret any statute other than the Michigan Act. Moreover, if any such statute involving a different Indian tribe were materially similar to the Michigan Act, another court of appeals would have the opportunity to interpret it. And even the Tribe does not purport to identify any contrary interpretation by any other court of appeals that might arguably reflect a divergence warranting this Court's review.

The Tribe asserts (Pet. 33-34) that no relevant "circuit split" can arise because "this [APA] case is almost certainly the only vehicle" to decide the proper interpretation of the Michigan Act. That contention is in significant tension with the Tribe's own view that the decision here will apply to other statutes involving other Indian tribes. Pet. 24-25. And the Tribe provides no reason for concluding that other courts of appeals could not consider similar questions in APA actions against the Secretary. Indeed, the Tribe itself has previously filed APA actions challenging the Secretary's decisions concerning tribal lands and Indian gaming in district courts in Michigan over which the Sixth Circuit exercises appellate jurisdiction. See, *e.g.*, *Sault Ste. Marie Tribe of Chippewa Indians* v. *United States*, 576 F. Supp. 2d 838, 840 (W.D. Mich. 2008); *Sault Ste. Marie Tribe of Lake Superior Chippewa Indians* v. *United States*, 78 F. Supp. 2d 699, 700 (W.D. Mich. 1999).

2. The court of appeals separately determined that the Tribe's acquisition of the Sibley Parcel was not lawful under Section 108(c)(5) of the Act because "[t]he mere acquisition of additional land, without any demonstration that the acquisition improves the quality or value of existing tribal lands, does not constitute an 'enhancement of tribal lands' within the plain meaning of [that provision]," Pet. App. 16a. See *id.* at 16a-22a. That determination—with which even the dissenting judge below did not disagree—is correct and warrants no further review.

a. The court of appeals rested its interpretation of Section 108(c)(5) on the ordinary meaning of the term "enhancement"; the Act's relevant context authorizing the use of funds for "the consolidation or enhancement of tribal lands," § 108(c)(5), 111 Stat. 2661; and the broader context of parallel statutes addressing the acquisition and enhancement of Indian lands. See Pet. App. 16a-22a. The court observed that "'[e]nhancement' typically"—but not invariably—"refers to a qualitative improvement" in something, *id.* at 16a, but the court ultimately anchored its decision on contextual factors showing that the term in Section 108(c)(5) carries that typical meaning and does not, as the Tribe argues, encompass every acquisition of additional land by the Tribe, *id.* at 17a-20a. See pp. 8-9, *supra* (summarizing decision).

Among other things, the court of appeals reasoned that Section 108(c)(5)'s use of the disjunctive phrase "consolidation or enhancement of tribal lands" should be construed, if possible, in a manner that gives effect to both of its textual components. Pet. App. 19a. The court also emphasized that "[t]he Tribe concedes" that a "consolidation" of tribal lands under that provision

"refers to the acquisition of land or land interests" for the purpose of "join[ing] two parcels under tribal ownership" and, perhaps, "combin[ing] the fractionated ownership interests in a parcel of tribal land." *Ibid.* As a result, the Tribe's position that an "'enhancement of tribal lands'" includes "any acquisition or increase in landholdings" would necessarily "swallow the more particular type of land acquisition for 'consolidation,'" rendering that portion of Section 108(c)(5)'s text "superfluous or ineffective." *Ibid.*

The Tribe provides no sound reason for questioning the court of appeals' analysis. The Tribe argues (Pet. 32) that dictionary definitions for "'enhance'" reflect that one of the ordinary uses of the term supports the view that "[l]and acquisitions that augment the size of the Tribe's total land possessions" may be understood as "enhanc[ing] tribal lands." The Tribe then asserts that because "'enhancement' *can* refer to an increase in any number of attributes," "*nothing in the ordinary usage* of [the term] *restricts* its meaning to an increase in [the] qualitative attributes"—as opposed to a quantitative increase in the amount—of tribal lands. Pet. 32-33 (emphases added). The court of appeals, however, did not disagree that one definition of the term could in isolation potentially refer to an increase in the amount of tribal land possessions. Nor did the court suggest that the term's "ordinary usage" forecloses that possibility. The court simply resolved that the specific context in which Section 108(c)(5) uses the term demonstrates that "enhancement" does not carry the meaning that the Tribe suggests. The Tribe ignores the analytical basis for the court's decision.

b. The Tribe suggests (Pet. 31) that this Court should at least grant review on the second question pre-

sented concerning Section 108(c)(5)'s "enhancement" language if it "grants review on the first question presented" because, the Tribe asserts, they are "closely related questions." The questions, however, have no pertinent connection to each other requiring that they be considered together. The first question concerns whether the Secretary must take land into trust under the Act if the Tribe has *unlawfully* acquired the land using Fund interest under Section 108(c). The second question asks whether the Tribe *lawfully* acquired the relevant land under Section 108(c)(5). Thus, if the Court were to grant review on both questions, its resolution of the second in the Tribe's favor would make any decision on the first unnecessary to the Court's disposition. That itself provides a sound reason to deny—not grant—certiorari on the second question even if the Court were to determine that the first question is sufficiently important to warrant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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