No. 05-978

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE E. PATAKI, GOVERNOR
OF THE STATE OF NEW YORK, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in holding that Indian Tribes and the United States were barred by laches from suing the State of New York for money damages as compensation for the State's acquisition of tribal lands in violation of federal law.

PARTIES TO THE PROCEEDING

The petitioner is the United States of America. The Cayuga Indian Nation of New York and the Seneca-Cayuga Nation of Oklahoma were plaintiffs in the district court and appellees/cross-appellants in the court of appeals.

The following respondents were defendants in the district court and appellants/cross-appellees in the court of appeals: AT&T; Harry F. Amidon; Town of Aurelius, New York; Village of Aurora, New York; Floyd Baker; Marjorie Baker; William H. Bancroft; Mary Barnes; John Bartow, Director, New York State Environmental Facilities Corp.; Howard Bellman; Norma Bilack, Clerk, Town of Springport, New York; Howard Birdsall; Jeanne Birdsall; Joseph H. Boardman, Commissioner of Transportation; David Brooks, Clerk, Town of Ledyard, New York; Nancy E. Carey, Member of the Board of Directors, New York State Thruway Authority; Timothy S. Carey, Trustee, Power Authority for the State of New York; Bernadette Castro, Commissioner of Parks and Recreation; County of Cayuga, New York; Village of Cayuga, New York; Louis P. Ciminelli, Trustee, Power Authority for the State of New York; Consolidated Rail Corp.; John J. Conway; Willis M. Cosad; Erin M. Crotty, Commissioner of Environmental Conservation and Chairman of Board of Directors, New York State Environmental Facilities Corp.; Leo Davids, Jr., Supervisor, Town of Varick, New York; Randy Deal; Lawrence F. DiGiovanna, Director, New York State Environmental Facilities Corp.; Gerard D. DiMarco, Trustee, Power Authority for the State of New York; Division of General Services of the Executive Department of the State of New York; Eisenhower College of the Rochester Institute of Technology; Dorothy Engst; Wesley Engst; Town of Fayette; John H. Fenimore, Adjutant General, New York State Division of Military and Naval

Affairs; Earl E. Fox; Robert Freeland, Mayor of Village of Seneca Falls, New York; Jeanne Freier; Louis Freier; Frederick Gable; Kenneth Gable; Arthur J. Gajarsa; Glenn S. Goord, Commissioner of Correctional Services; Frank A. Hall, New York State Division of Youth; Robert W. Hayssen, Chairman, Board of Supervisors for County of Seneca, New York; William C. Hennessy; Willis M. Hoster; J. Souhan & Sons, Inc.; John A. Johnson, Commissioner, Office of Children and Family Services; Edwin Kelly; Ellen Kelly; Victoria S. Kennedy, Director, New York State Environmental Facilities Corp.; John L. King; Gail Kirk; William J. Kirk; David L. Koch; Henry Wm. Koch; Gordon Lambert; Grace Lambert; Town of Ledyard; Lehigh Valley Railroad; George G. Markel; Grace Martin; Leon Martin; Thomas B. Masten, Jr.; William F. McCarthy, Director, New York State Environmental Facilities Corp.; Frank S. McCullough, Trustee, Power Authority for the State of New York; James W. McMahon, Superintendent, Division of the New York State Police of the Executive Department of the State of New York; Frank P. Milano, Director, New York State Environmental Facilities Corp.; Miller Brewing Co.; Richard P. Mills, Commissioner, New York State Education Department and Commissioner, State University of New York; Town of Montezuma; Mari B. Mosher; Ralph E. Mosher; Thomas J. Murphy, Executive Director, Dormitory Authority of the State of New York; New York State Department of Corrections; New York State Department of Health; New York State Department of Mental Hygiene; New York State Department of Transportation; New York State Department of Environmental Conservation; New York State Division for Youth; New York State Division of Military and Naval Affairs; New York State Division of State Police; New York State Education Department; New York State Electric & Gas Corp.; New York State Environmental Facilities Corp.; New

York State Facilities Development Corp.; New York State Office of Parks and Recreation; New York State Thruway Authority; New York Telephone Co.; Ferdinard L. Nicandri; June Nicandri; M.D. Antonia C. Novello, Commissioner of Health and Director, New York State Environmental Facilities Corp.; Emerson O'Connor; Leah O'Connor; Ted W. O'Hara; Jessica Olsowske; William Olsowske; David G. Palmer; George E. Pataki, Governor of the State of New York; F.H. Patterson; W. W. Patterson, Jr.; Paul Perkins; Power Authority of the State of New York; Marilyn Proulx, Clerk, Town of Aurelius, New York; R.N. Patreal Corp.; John R. Riedman, Member of the Board of Directors, New York State Thruway Authority; Anna Rindfleisch; Kenneth J. Ringler, Commissioner, Division of General Services of the Executive Department of the State of New York; Ann W. Ryan, Clerk of Village of Union Springs, New York; Marilyn Salato, Clerk of Village of Cayuga, New York; Frank A. Saracino, Supervisor, Town of Seneca Falls, New York; Arlene Saxton; George Saxton; County of Seneca, New York; Joseph J. Seymour, Trustee, Power Authority for the State of New York; Jacqueline Smith, Clerk, Town of Montezuma, New York; James Somerville, Town Supervisor, Town of Fayette, New York; George G. Souhan; Eliot Spitzer, New York State Attorney General; Bruce Stahl; Ralph A. Standbrook, Chairman of County Legislature for County of Cayuga, New York; State University of New York; State of New York; John Strecker; Victoria Strecker; Alberta Stuck; Millard Stuck; Benjamin Swayze; Victoria Swayze; Henry Tamburo; Louis R. Tomson, Chairman and Member of the Board of Directors, New York State Thruway Authority; Town of Seneca Falls, New York; Town of Springport, New York; Ronald Tramontano, Director, New York State Environmental Facilities Corp.; U.S. Department of Education; Eric E. Van Loon, Settlement Master; Town of

Varick, New York; Village of Seneca Falls, New York; Village of Union Springs, New York; W.W. Patterson, Inc; Clifford Waldron; Wells College; Robert E. White; and Lelia M. Wood-Smith, Director, New York State Environmental Facilities Corp.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-50a) is reported at 413 F.3d 266. Opinions of the district court are reported at 89 F.R.D. 627, 544 F. Supp. 542, 565 F. Supp. 1297 (App. 466a-536a), 667 F. Supp. 938 (App. 443a-465a), 730 F. Supp. 485 (App. 423a-442a), 758 F. Supp. 107 (App. 400a-422a), 762 F. Supp. 30, 766 F. Supp. 69, 771 F. Supp. 19 (App. 388a-399a), 79 F. Supp. 2d 66, 79 F. Supp. 2d 78, 83 F. Supp. 2d 318, 165 F. Supp. 2d 266 (App. 120a-321a), and 188 F. Supp. 2d 223 (App. 58a-119a). An additional opinion of the district court (App. 322a-387a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 28, 2005. Petitions for rehearing were denied on September 8, 2005 (App. 537a-538a, 539a-540a). On November 21, 2005, Justice Ginsburg extended the time for filing a petition for a writ of certiorari to and including January 6, 2006. On December 27, 2005, Justice Ginsburg further extended the time for filing a petition for a writ of certiorari to and including February 3, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The following statutory provisions are reproduced in the appendix to this petition: 25 U.S.C. 177 (App. 541a); 28 U.S.C. 2415(a) and (b) (App. 542a-544a); and Section 5(c) of Public Law No. 97-394, 96 Stat. 1978 (App. 544a).

STATEMENT

1. The Cayuga Nation was part of the Six Nations, an alliance of Iroquois-speaking Tribes predating Columbus. App. 189a-190a. "Prior to the Revolutionary War, Cayuga territory comprised approximately 1700 square miles, spanning from Lake Ontario southward into Pennsylvania." App. 190a. The Nation's members practiced a "mixed economy" that included agriculture, hunting, gathering, and fishing. App. 198a. Early in the Revolutionary War, the Six Nations remained neutral, but most of the Cayugas ultimately supported the British. App. 191a-192a. As a result of a subsequent campaign against British-allied Tribes in which both the Continental and New York governments participated, the Six Nations' population fell precipitously, and post-war conditions prevented most surviving Cayugas from reclaiming their destroyed villages. App. 194a-199a; C.A. App. A7676-A7681. The Cayugas dispersed into three main groups: the majority

settled at Buffalo Creek, a minority returned to Cayuga Lake, and others relocated to Canada. App. 201a-202a.

In 1788 and 1789, New York negotiated several agreements with constituents of the Six Nations, including the Cayugas. App. 212a. The State repeatedly dealt with minority factions of individual Tribes, despite Governor Clinton's awareness that Iroquois protocol required consent from authorized representatives of all Six Nations. *Ibid.*; C.A. App. A7109-A7125, A7705-A7713. In one such treaty signed in 1789, the Cayuga minority ceded 1600 square miles of land to the State in return for a $500 annuity and an additional lump sum, but retained a 64,000-acre Reservation "for their own use and cultivation but not to be sold, leased or in any other manner aliened or disposed of to others." App. 213a. Destitute and convinced that the State's appropriation was irreversible, especially given the entry of settlers on the land, the Cayuga majority eventually acknowledged the 1789 Treaty for a share of the annuity and a "benevolence" of $1000. App. 225a; C.A. App. A7146.

"With the adoption of the Constitution, Indian relations became the exclusive province of federal law." *County of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226, 234 (1985) (*Oneida II*); see, *e.g.*, *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832) ("The treaties and laws of the United States contemplate * * * that all intercourse with [Indians] shall be carried on exclusively by the government of the union."). In 1790, Congress passed the first Trade and Intercourse Act. Ch. 33, 1 Stat. 137. Section 4 of the 1790 Act provided that "no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States." 1 Stat. 138. The substance

of that prohibition (sometimes referred to as the Nonintercourse Act) was carried forward by Congress in the Trade and Intercourse Acts of 1793, 1796, 1799, 1802, and 1834, and it remains in effect today. See *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661, 667-668 & n.4 (1974) (*Oneida I*); 25 U.S.C. 177.

On November 11, 1794, the United States and the Six Nations entered into the Treaty of Canandaigua. 7 Stat. 44. In Article 2, the United States "acknowledge[d] the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New York, and called their reservations, to be their property." 7 Stat. 45. Article 2 further provided that "the United States will never claim the same, nor disturb" the Nations "in the free use and enjoyment" of those lands, and that "the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase." *Ibid.* The United States also promised to expend $4500 annually for clothing and other goods for the Six Nations. 7 Stat. 46 (Art. 6). The Six Nations in turn agreed that they would "never claim any other lands, within the boundaries of the United States; nor ever disturb the people of the United States in the free use and enjoyment thereof." 7 Stat. 45 (Art. 4).

In April 1795, notwithstanding the enactment of the 1790 and 1793 Trade and Intercourse Acts and the ratification of the Treaty of Canandaigua, the New York legislature passed a statute providing for the purchase of lands belonging to the Oneida, Onondaga, and Cayuga Tribes. App. 246a-247a. Under the terms of that statute, tribal lands were to be resold by the State for at least four times the price paid to the Tribes. See App. 246a-247a, 279a-280a. Upon learning of the State's intentions, Secretary of War Timothy Pickering sought the opinion of Attorney General William Bradford, who concluded that the language of the Trade and Intercourse Act of 1793

was "too express to admit of any doubt" that the Act forbade the sale of tribal lands except pursuant to federal treaty. App. 253a; see App. 253a-254a. Although that opinion was transmitted to outgoing Governor Clinton and incoming Governor Jay, the Governors would not stop the negotiations. App. 248a-249a, 254a-260a; C.A. App. A11,158, A11,209-A11,210; see *Oneida II*, 470 U.S. at 232 (recounting Secretary Pickering's warnings in 1795 to Governors Clinton and Jay concerning the requirements of the Trade and Intercourse Act).

On July 27, 1795, the State of New York signed an agreement with the Cayuga majority under which the State purported to acquire the bulk of the Tribe's remaining lands in exchange for an annuity of $1800. App. 249a, 253a. The State ratified the agreement in March 1796. App. 260a. Later that year, the land was subdivided and sold for an average price of approximately nine times the amount paid to the Cayugas. App. 275a, 280a-281a. In 1807, the State purchased the remaining Cayuga lands. App. 289a-294a. The State paid $4800 for those lands, which were appraised later in the same year at slightly less than $15,000. App. 292a.

After the sale of their remaining lands in 1807, the Cayugas had no homeland in the State of New York. A diaspora followed, with some Cayugas moving to Seneca reservations in the State, others to Ohio and then the Indian Territory (in present-day Oklahoma and Kansas), and others to Canada. C.A. App. A7197-A7203. During the years between 1853 and the filing of this lawsuit in 1980, the Cayugas made repeated efforts to obtain additional compensation for their lands from New York officials, but those efforts were largely unsuccessful. See App. 294a-298a.

2. In *Oneida I* and *Oneida II*, this Court allowed a Tribe's suit for damages, alleging that the State of New York had

unlawfully acquired tribal lands in 1795, to go forward in federal district court.

a. In *Oneida I*, the Court held that a Tribe's suit alleging wrongful dispossession of its lands in 1795, in violation of applicable treaties and the Trade and Intercourse Act, fell within the federal-question jurisdiction of the district court. See 414 U.S. at 663-665 (summarizing Tribe's allegations). Observing that "Indian title is a matter of federal law and can be extinguished only with federal consent," *id.* at 670, the Court explained that the plaintiff Tribe's asserted right of possession was based partly "on their aboriginal right of occupancy which was not terminable except by act of the United States," *id.* at 677; partly on "treaties guaranteeing [the Tribe's] possessory right until terminated by the United States," *id.* at 678; and partly on the various Trade and Intercourse Acts, "which put in statutory form [the rule] * * * that the extinguishment of Indian title required the consent of the United States," *ibid.*

b. In *Oneida II*, this Court held that the plaintiff Tribe could maintain a federal common-law cause of action to vindicate its rights to land that had been acquired by the State without federal authorization. The Court further held that the Tribe's suit (which had been filed in 1970) was not barred by any applicable statute of limitations. 470 U.S. at 240-244. The Court explained that the suit was timely under the Indian Claims Limitation Act of 1982, Pub. L. No. 97-394, 96 Stat. 1976, and that it would be inappropriate to borrow a state limitations period when Congress had addressed the timeliness question directly. See 470 U.S. at 242-244. While declining to rule definitively on the availability of a laches defense (because the defendants had abandoned that defense on appeal), see *id.* at 244-245, the Court identified various statutory and doctrinal principles weighing against recognition of such a defense and stated that "the application of laches would

appear to be inconsistent with established federal policy," see *id.* at 244-245 n.16. The Court left open the possibility, however, that "equitable considerations" might "limit the relief available to" the Tribe if and when the case proceeded to final judgment. See *id.* at 253 n.27.

3. In 1980, the Cayuga Indian Nation of New York and the Seneca-Cayuga Tribe of Oklahoma—successors to the Cayuga Nation—filed suit in federal district court, naming as defendants the State of New York, two counties, and a class of landowners. C.A. App. A204-A229, A342-A349. The Tribes alleged that the purchases of their lands in 1795 and 1807 were invalid because those purchases had not been approved by the federal government as required by the Trade and Intercourse Act. See *id.* at A220-A227, A344-A347. As relief, the Tribes sought ejectment of the current occupants of the land, as well as trespass damages in the amount of fair rental value for the period of dispossession. *Id.* at A227-A229, A347-A349. In 1992, the United States intervened as a plaintiff. *Id.* at A2581-A2589. In its complaint in intervention, the government alleged that the Trade and Intercourse Act gives the United States "a legal interest in protecting any property in which the Cayugas have an interest." *Id.* at A2583. The complaint in intervention further stated that the United States was filing suit both pursuant to its "trust relationship with the Cayugas" and "on its own behalf." *Ibid.*

After ruling that the State of New York was liable to the Tribes for wrongful conversion of tribal land, the district court addressed the remedial issues presented by the case. The court held that ejectment of the land's current occupants would be an inappropriate remedy. App. 322a-387a. The court explained, *inter alia*, that "monetary damages will produce results which are as satisfactory to the Cayugas as those which they could properly derive from ejectment," App. 373a-374a, and that "ejectment would potentially displace literally

thousands of private landowners and several public landowners, including those who provide such essential public services as electricity and transportation systems," App. 382a. The court concluded that the State alone, as the "original or primary tortfeasor," could properly be held liable for the full amount of the damages resulting from its violations of the Trade and Intercourse Act. See App. 10a (quoting *Cayuga Indian Nation* v. *Pataki*, 79 F. Supp. 2d 66, 74 (N.D.N.Y. 1999)). A jury subsequently found that the fair market value of the land (without improvements) was $35,000,000, and that the fair rental value, minus a set-off for the State's past payments, totaled $1,911,672.62 for the period of dispossession. C.A. App. A4758-A4767; see App. 2a.

The district court then conducted a 23-day bench trial to determine an appropriate award of prejudgment interest. The court ultimately awarded $211,000,326.80 in interest, for a total of $247,911,999.42 in damages, with the award running solely against the State of New York. See App. 55a, 120a-321a. In arriving at that award, the court substantially credited the calculations of the federal government's expert, who had computed prejudgment interest at $527,500,817. App. 320a. The district court concluded, however, that it was "just and equitable" to reduce that amount by 60% in light of "(1) the passage of 204 years; (2) the failure of the U.S. to intervene or to seek to protect the Cayuga's interests prior to 1992; (3) the lack of fraudulent or calculated purposeful intent on the part of the State to deprive the Cayuga of fair compensation for the lands ceded by them in [1795 and 1807]; and (4) the financial factors enumerated by [the State's expert]." *Ibid.* The district court certified its rulings for immediate appeal. App. 51a-57a.

4. While interlocutory appeals filed by all parties except the United States were pending in the Second Circuit, this Court issued its decision in *City of Sherrill* v. *Oneida Indian*

Nation, 125 S. Ct. 1478 (2005). In *City of Sherrill*, this Court held that the Oneida Nation was not entitled to immunity from state and local taxation of land that had been purchased from the Tribe in 1805, in violation of the Trade and Intercourse Act, and that the Tribe had reacquired in 1997. The Court stated that, "[i]f [the Tribe] may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls." *Id.* at 1493. Noting that the relevant geographic area is now "overwhelmingly populated by non-Indians," the Court found that a "checkerboard of alternating state and tribal jurisdiction in New York State—created unilaterally at [the Tribe's] behest—would seriously burden the administration of state and local governments and would adversely affect landowners neighboring the tribal patches." *Ibid.* (brackets and internal quotation marks omitted). The Court concluded that "the distance from 1805 to the present day, the [Tribe's] long delay in seeking equitable relief against New York or its local units, and developments in the city of Sherrill spanning several generations, evoke the doctrines of laches, acquiescence, and impossibility, and render inequitable the piecemeal shift in governance this suit seeks unilaterally to initiate." *Id.* at 1494.

The Court in *City of Sherrill* stated that "the question of damages for the Tribe's ancient dispossession is not at issue in this case, and we therefore do not disturb our holding in *Oneida II*." 125 S. Ct. at 1494. The Court noted, as it had in *Oneida II*, that "application of a nonstatutory time limitation"—*i.e.*, the equitable doctrine of laches—"in an action for damages would be 'novel.'" *Id.* at 1494 n.14 (quoting *Oneida II*, 470 U.S. at 244 n.16). The Court in *City of Sherrill* stated, however, that with regard to the reassertion of tribal sovereignty over the land after a 200-year hiatus, "[n]o similar nov-

elty exists [in applying the doctrine of laches] when the specific relief [the Tribe] now seeks would project redress for the Tribe into the present and future." *Ibid.*

5. Relying heavily on this Court's intervening decision in *City of Sherrill*, the court of appeals reversed the district court's award of damages in the instant case. App. 1a-50a. The court of appeals understood *City of Sherrill* as "dramatically alter[ing] the legal landscape," and it construed that decision "to hold that equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims, even when such a claim is legally viable and within the statute of limitations." App. 13a, 14a. In finding the claims for damages here to be "comparably disruptive" to the Oneidas' suit for injunctive relief to prevent future taxation in *City of Sherrill*, the court of appeals observed that, "[d]espite the eventual award by the District Court of monetary damages, * * * [the Cayugas] have asserted a continuing right to immediate possession as the basis of all of their claims, and have always sought ejectment of the current landowners as their preferred form of relief." App. 16a. The court stated that "disruptiveness is inherent in the claim itself—which asks this Court to overturn years of settled land ownership—rather than an element of any particular remedy which would flow from the possessory claim." App. 17a. The court of appeals concluded that "possessory land claims of this type are subject to the equitable considerations discussed in *Sherrill*." *Ibid.*

Examining the circumstances of this case, the court of appeals held that "the same considerations that doomed the Oneidas' claim in *Sherrill* apply with equal force here." App. 21a. The court then concluded: "The fact that, nineteen years into the case, at the damages stage, the District Court substituted a monetary remedy for plaintiffs' preferred remedy of ejectment cannot salvage the claim, which was subject to dis-

missal *ab initio*." App. 22a (footnote omitted). The court of appeals further held that laches barred the claims asserted by the United States. App. 23a-26a. The court "recognize[d] that the United States has traditionally not been subject to the defense of laches," but it stated that "this does not seem to be a *per se* rule." App. 23a-24a. While declining to "set forth broad guidelines for when the doctrine might apply," the court of appeals concluded that the government's claims were barred by laches because the United States' delay was in the court's view "egregious," because Congress had not enacted a statute of limitations until "one hundred and fifty years after the cause of action accrued," and because "the United States intervened in this case to vindicate the interest of the [Cayugas], with whom it has a trust relationship," rather than to enforce sovereign rights. App. 24a-25a & n.8.

b. Judge Hall dissented in part. App. 28a-50a. Judge Hall read this Court's decision in *City of Sherrill* to confirm that ejectment of current occupants would be an inappropriate remedy in this case, but not to preclude the district court from awarding money damages. App. 28a. She emphasized that the Tribes had sought trespass damages from the outset of the suit and had never abandoned their claims for monetary relief. App. 28a-29a. Judge Hall further explained that "[t]he defense of laches pertains only to the remedy sought, not the cause of action itself," App. 35a, and that "there does not appear to be anything in the money damages award in this case that would be disruptive," App. 37a.

Judge Hall also concluded that, "[i]n the instant case, the United States pursues a right created by a federal statute and proceeds in its sovereign capacity and, as such, is not subject to a laches defense." App. 39a-40a; see App. 39a-45a. In that regard, she noted that Congress has enacted a statute of limitations (28 U.S.C. 2415) that applies to the damages claims at issue here. App. 44a. She further explained that, "insofar as

it acts on behalf of Indian tribes, the United States acts to protect a public interest, entirely dissimilar from the private interest served where the United States pursues an action based on its purely commercial endeavors." *Ibid.*

REASONS FOR GRANTING THE PETITION

More than 20 years ago, this Court in *Oneida II* held that the Oneida Nation could maintain a federal common-law action for damages based on the acquisition of its land by the State of New York in 1795 in violation of federal law. After careful consideration of the governing law, including statute-of-limitations provisions enacted by Congress specifically to preserve such claims, this Court concluded that neither the defendants in that case nor the Court itself had "found any applicable statute of limitations or other relevant legal basis for holding that the Oneidas' claims are barred or otherwise have been satisfied." 470 U.S. at 253. A number of tribal land cases have proceeded in reliance on *Oneida II* and have consumed an extraordinary amount of party, attorney, and judicial time and resources (including the resources of the federal government) during the past two decades.

The Court in *City of Sherrill* specifically disavowed any intent to "disturb [its] holding in *Oneida II*." 125 S. Ct. at 1494. Notwithstanding this Court's express refusal to overrule its own precedent, however, the court of appeals invoked *City of Sherrill* in holding that the Cayugas' damages claims—claims functionally indistinguishable from those that the Court in *Oneida II* permitted to go forward—were "subject to dismissal *ab initio*." App. 22a. The practical effect of the Second Circuit's decision is to "disturb [this Court's] decision in *Oneida II*." The decision below deprives the Cayugas and similarly-situated Tribes of *any* remedy for the State's unlawful acquisition of their lands and renders superfluous the protracted litigation that was the natural and foreseeable

consequence of this Court's earlier ruling in *Oneida II*. In light of the gravity of the wrongs alleged and proved in this and similar cases, the substantial interest in affording a remedy to the Tribes that suffered those wrongs, and the significant resources consumed in the litigation of tribal land claims in the State of New York in reliance on this Court's decision in *Oneida II*, the proper reconciliation of the decisions in *Oneida II* and *City of Sherrill* should be determined by this Court rather than by a divided panel of the court of appeals.

Even apart from its inconsistency with this Court's decisions in *Oneida II* and *City of Sherrill*, the court of appeals' analysis is deeply flawed. The court held the land claims here to be barred by the equitable defense of laches notwithstanding the legal character of the underlying ejectment action and of the damages remedy awarded by the district court, the enactment by Congress of detailed limitations provisions under which the claims at issue here are expressly deemed to be timely, and the participation as a plaintiff of the United States in its sovereign capacity, which independently renders laches inapplicable. In light of the magnitude of the court of appeals' errors, the importance of the legal issues involved, the practical significance of these and similar land claims to Tribes and to the United States, and the reliance interests engendered by the decision in *Oneida II*, this Court's review is clearly warranted.

In the Trade and Intercourse Acts and the Treaty of Canandaigua, the United States committed the Nation to protecting the interests of the Cayugas and other New York Indian Nations in their lands. This Court should ensure that the United States is able to honor that commitment by affording some measure of recompense for New York's clear violation of that undertaking.

A. The Decision Below Conflicts With This Court's Decisions In *Oneida II* And *City Of Sherrill*

The Court in *Oneida II* squarely rejected the contention that a borrowed state limitations period should govern tribal land claims such as those at issue here. 470 U.S. at 240-244; cf. pp. 21-25, *infra*. Because the defendants in that case had abandoned the defense of laches on appeal, the Court did not definitively rule on the availability of that defense. See 470 U.S. at 244-245. The Court observed, however, that "application of the equitable defense of laches in an action at law would be novel indeed," *id*. at 244 n.16, and it identified other respects in which recognition of that defense in the context of tribal land claims appeared inconsistent with federal law and policy, see *id*. at 244-245 n.16.

In particular, the Court noted its prior observation that "the equitable doctrine of laches * * * cannot properly have application to give vitality to a void deed and to bar the rights of Indian wards in lands subject to statutory restrictions." *Oneida II*, 470 U.S. at 244 n.16 (quoting *Ewert* v. *Bluejacket*, 259 U.S. 129, 138 (1922)). The Court also noted that its prior decisions indicated that extinguishment of Indian title requires a sovereign act, *id*. at 244-245 n.16 (citing *Oneida I*, 414 U.S. at 670, and *United States* v. *Candelaria*, 271 U.S. 432, 439 (1926)), and that "the statutory restraint on alienation of Indian tribal land adopted by the Nonintercourse Act of 1793 is still the law," *id*. at 245 n.16 (citing 25 U.S.C. 177). Indeed, Section 177 provides that "[n]o purchase * * * of lands * * * from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." Those principles are fully applicable here.

In the instant case, however, the court of appeals concluded that this Court's decision in *City of Sherill* "has dramatically altered the legal landscape against which we con-

sider plaintiffs' claims." App. 13a. That is incorrect. The Court in *City of Sherrill* discussed *Oneida II* at some length, and it took pains to distinguish rather than to repudiate its earlier ruling. And because even a large one-time damages award will not affect either the occupancy or the governance of the relevant lands on a prospective basis, the district court's remedial order will not entail the sort of practical disruption that concerned the Court in *City of Sherrill*.

1. In discussing the significance of *Oneida II* for the Tribe's claim of a tax immunity in *City of Sherrill*, the Court observed that, "[w]hen the Oneidas came before this Court 20 years ago in *Oneida II*, they sought money damages only. * * * The Court reserved for another day the question whether 'equitable considerations' should limit the relief available to the present-day Oneidas." 125 S. Ct. at 1489 (quoting *Oneida II*, 470 U.S. at 253 n.27). After emphasizing the distinction between the identification of a substantive right or obligation and the selection of an appropriate remedy, see *ibid.*, the Court explained that, in *City of Sherrill* itself, the plaintiff Tribe had sought "declaratory and injunctive relief recognizing its present and future sovereign immunity from local taxation on parcels of land the Tribe purchased in the open market, properties that had been subject to state and local taxation for generations." *Ibid.* The Court concluded that "'standards of federal Indian law and federal equity practice' preclude the Tribe from rekindling embers of sovereignty that long ago grew cold." *Id.* at 1489-1490 (quoting *Oneida Indian Nation* v. *County of Oneida*, 199 F.R.D. 61, 90 (N.D.N.Y. 2000)). Far from casting doubt on its earlier conclusion that the Tribe in *Oneida II* was entitled to pursue a damages action for the wrongful conversion of tribal lands, the Court in *City of Sherrill* distinguished *Oneida II* on the ground that the suit in *City of Sherrill* involved a fundamen-

tally different remedy having more problematic prospective implications.

Indeed, the Court in *City of Sherrill* quoted an Oneida land-claim decision written by the same district judge who presided over this case. In the Oneida land-claim litigation, as in this case, the district court denied an ejectment remedy, while expressly recognizing that the plaintiff Tribe could obtain monetary damages from parties other than private landowners. See *Oneida Indian Nation*, 199 F.R.D. at 70-95. As this Court noted with apparent approval, the district court thus "transcend[ed] the theoretical" and adopted "a pragmatic approach." *City of Sherrill*, 125 S. Ct. at 1488 (quoting 199 F.R.D. at 92); see *id.* at 1489-1490, 1493. The Court in *City of Sherrill* also relied (see *id.* at 1491-1493) on two Indian-law precedents of this Court holding that damages would be available even though—indeed, *because*—recovery of the subject lands would not. See *Yankton Sioux Tribe of Indians* v. *United States*, 272 U.S. 351, 357-359 (1926); *Felix* v. *Patrick*, 145 U.S. 317, 334 (1892).

Later in its opinion, the Court in *City of Sherrill* made that point even more explicit, stating that "the question of damages for the Tribe's ancient dispossession is not at issue in this case, and we therefore do not disturb our holding in *Oneida II*." 125 S. Ct. at 1494. The Court repeated its observation in *Oneida II* that "application of a nonstatutory time limitation in an action for *damages* would be 'novel.'" *Id.* at 1494 n.14 (quoting 470 U.S. at 244 n.16) (emphasis added); see *id.* at 1489. But the Court found that "[n]o similar novelty exists when the specific relief [the Tribe] now seeks would project redress for the Tribe into the present and future." *Ibid.*

2. In assessing the potential for disruption that the suit in *City of Sherrill* would entail, the Court did not emphasize the financial consequences of the Tribe's claim of immunity from

state and local property taxes. The focus of the Court's concern was on prospective issues of sovereignty, not on the monetary impact of the suit. The Court stated that, "[i]f [the Tribe] may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls that protect all landowners in the area." 125 S. Ct. at 1493. The Court found that "[a] checkerboard of alternating state and tribal jurisdiction in New York State—created unilaterally at [the Tribe's] behest—would seriously burden the administration of state and local governments and would adversely affect landowners neighboring the tribal patches." *Ibid.* (brackets and internal quotation marks omitted); see *id.* at 1492 ("When a party belatedly asserts a right to present and future sovereign control over territory, longstanding observances and settled expectations are prime considerations."). The Court concluded that the passage of time and concomitant changes within the relevant geographic area "render inequitable the piecemeal shift *in governance* this suit seeks unilaterally to initiate." *Id.* at 1494 (emphasis added).

In the instant case, by contrast, affirmance of the district court's damages award would entail no incursion on the State's ongoing exercise of governing authority. Nor could the award plausibly be regarded as the precursor to some future lawsuit through which the Cayugas might attempt to reassert sovereignty over the relevant lands. To the contrary, the award of damages for the current fair market value of the lands was intended to provide a final resolution of the Tribes' claims for the prior wrongful conversion, and it was premised on the district court's determination that the tribal plaintiffs cannot equitably be restored to possession of the property. The rationale for the Court's decision in *City of Sherrill* is therefore wholly inapplicable here.

3. In holding that the Cayugas' claims are properly analogized to those involved in *City of Sherrill*, the court of appeals focused not on the damages remedy actually awarded by the district court, but on the more far-reaching relief requested in the Tribes' complaints, which predated by decades the Court's decision in *City of Sherrill*. See App. 16a ("[P]laintiffs have asserted a continuing right to immediate possession as the basis of all of their claims, and have always sought ejectment of the current landowners as their preferred form of relief."); App. 17a ("Under the *Sherrill* formulation, this type of possessory land claim—seeking possession of a large swath of central New York State and the ejectment of tens of thousands of landowners—is indisputably disruptive."). The court of appeals concluded that the district court's later "substitut[ion of] a monetary remedy for plaintiffs' preferred remedy of ejectment cannot salvage the claim, which was subject to dismissal *ab initio*." App. 22a (footnote omitted). That analysis is fundamentally misguided.

a. As Judge Hall noted in dissent (App. 28a-29a), the Tribes' complaints sought from the outset, as one element of relief, an award of "trespass damages in the amount of the fair rental value for each portion of the subject land." C.A. App. A228, A348. Such damages would logically be awarded in addition (rather than as an alternative) to an ejectment remedy, since ejectment of the lands' current occupants would not have compensated the Tribes for losses suffered during the period when they were out of possession. Thus, the fair-rental-value component of the ultimate damages award was not a "substitute[] * * * for plaintiffs' preferred remedy of ejectment" (App. 22a); it was instead a discrete element of

relief that the Tribes had requested from the outset of the case.[1]

b. The bulk of the damages award in this case (before the addition of prejudgment interest) represented the jury's assessment of the current market value of the land in its unimproved condition. That element of damages is properly characterized as a substitute for an ejectment remedy, and the Tribes' complaints did not specifically identify such damages as a potential alternative to an order restoring the Tribes to possession (though those complaints did request "such other and further relief as the Court deems just," C.A. App. A229, A359).

It is a well-settled principle of federal civil procedure, however, that "a meritorious claim will not be rejected for want of a prayer for appropriate relief." *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60, 66 (1978); see Fed. R. Civ. P. 54(c) ("Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings."). The court of appeals cited no authority for its conclusion that the Tribes' initial request for a remedy later found to be inappropriate rendered their complaints "subject to dismissal *ab initio*" (App. 22a), and the court's analysis is contrary to established federal pleading rules. So long as

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[1] There is nothing novel or anomalous about the entry of a damages award in an ejectment action. In his concurring opinion in *Oneida I*, then-Justice Rehnquist described a similar claim as follows:

> [T]he complaint in this action is basically one in ejectment. Plaintiffs are out of possession; the defendants are in possession, allegedly wrongfully; and the plaintiffs claim damages because of the allegedly wrongful possession. These allegations appear to meet the pleading requirements for an ejectment action as stated in *Taylor* v. *Anderson*, 234 U.S. 74 (1914).

Oneida I, 414 U.S. at 683.

damages for the current market value of the land are an otherwise appropriate element of relief for the wrongful conversion of tribal property, the Tribes' initial failure specifically to request such damages as an alternative to their preferred remedy of ejectment neither provided a basis for dismissing their suit at the outset nor precluded the district court from entering a monetary award at the conclusion of the case.[2]

c. The court of appeals' approach is inconsistent with this Court's decisions in both *Oneida II* and *City of Sherrill*. In *Oneida II*, the Court reserved the question "whether equitable considerations should limit the relief available to the" plaintiff Tribes during "the final disposition of th[e] case." 470 U.S. at 253 n.27. The Court thus recognized that the Tribes might not ultimately obtain the full relief requested in their complaint. The Court nevertheless affirmed the court of appeals' "finding of liability under federal common law." *Id*. at 253. The court of appeals' conclusion in this case that the Cayugas' request for an ejectment remedy rendered their suit "subject to dismissal *ab initio*" (App. 22a) cannot be reconciled with that holding.

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[2] Indeed, in an opinion in this case issued in 1983, the district court emphasized that "should plaintiffs ultimately prevail the utmost circumspection and restraint will be employed in fashioning an appropriate remedy." App. 485a. The court observed, however, that "the fact that a particular remedy sought may be unavailable or impractical as too disruptive or unfair does not render a lawsuit unjusticiable, so long as there is some form of relief that the Court could fashion." *Ibid.* The court further noted that, in the then-ongoing Oneida land-claim litigation, the "plaintiffs were awarded historically adjusted monetary damages as compensation for the illegal alienation of their land." *Ibid*. Thus, the district court's ultimate decision to award money damages as a substitute for an ejectment remedy was not (as the court of appeals suggested) an eleventh-hour reversal of field. Rather, the district court expressly recognized from the outset of the case that the Cayugas, if successful on the merits of their suit, might receive monetary relief rather than an order restoring them to possession of the subject lands.

The court of appeals also ignored this Court's pointed admonition in *City of Sherrill* (125 S. Ct. at 1489) that questions concerning the substantive scope of a plaintiff's rights or a defendant's obligations differ fundamentally from questions concerning the selection of an appropriate remedy after a breach of law has been established. In reversing the district court's award of trespass damages, the court of appeals stated that, "because plaintiffs are barred by laches from obtaining an order conferring possession in ejectment, no basis remains for finding such constructive possession or immediate right of possession as could support the damages claimed." App. 23a. Contrary to the court of appeals' analysis, the district court's refusal to restore the Tribes to actual possession of the relevant lands, based on the court's determination that equitable factors precluded ejectment of the lands' current occupants, is in no way inconsistent with the Tribes' contention that their *right* to possession has been violated. The court of appeals' rationale for reversing the award of trespass damages reflects the very conflation of liability and remedial questions against which the Court in *City of Sherrill* warned.

B. The Decision Below Conflicts With Congress's Judgment, Reflected In A Series Of Limitations Acts, That Claims Like These Should Be Permitted To Go Forward

The court of appeals' invocation of laches as a basis for dismissal of these suits is particularly inappropriate because Congress has precisely defined the circumstances under which damages claims concerning Indian lands will be treated as time-barred. In 1966, Congress enacted Pub. L. No. 89-505, 80 Stat. 304 (28 U.S.C. 2415), which "provided a special limitations period of 6 years and 90 days for contract and tort suits for damages brought by the United States on behalf of Indians. The statute stipulated that claims that accrued prior to its date of enactment, July 18, 1966, were deemed to have

accrued on that date." *Oneida II*, 470 U.S. at 241-242 (citations omitted); see 28 U.S.C. 2415(a), (b), and (g). On four subsequent occasions, "Congress extended the time within which the United States could bring suits on behalf of the Indians." *Oneida II*, 470 U.S. at 242.

Those legislative efforts culminated in the Indian Claims Limitation Act of 1982, Pub. L. No. 97-394, 96 Stat. 1976 (1982 Act), which "established a system for the final resolution of pre-1966" Indian land claims. *Oneida II*, 470 U.S. at 243. The 1982 Act directed the Secretary of the Interior to prepare and publish in the *Federal Register* two lists of Indian claims that could potentially be affected by the limitations provisions of 28 U.S.C. 2415. See 1982 Act §§ 3-4, 96 Stat. 1977-1978. Those lists were published on March 31 and November 7, 1983, see 48 Fed. Reg. 13,698, 51,204, and the Cayuga land claim was included on the first list, see *id.* at 13,920.

The 1982 Act established new limitations periods whose operation depends on the Secretary's listing decisions and on his subsequent assessment as to the suitability of particular claims for litigation. With respect to contract and tort suits brought by the United States, the 1982 Act amended 28 U.S.C. 2415(a) and (b), which now state that any right of action on a claim included on one of the lists

> shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

28 U.S.C. 2415(a) and (b).[3] With respect to suits brought by the Tribes themselves, the 1982 Act similarly provides that a claim included on one of the lists will be barred unless suit is filed within one year after the Secretary has rejected the claim for litigation, see § 5(b)-(c), 96 Stat. 1978, or within three years after the Secretary has submitted a proposed legislative resolution to Congress, see § 6, 96 Stat. 1978.[4]

Thus, for claims that were listed by the Secretary pursuant to the 1982 Act, Congress has established an express statutory limitations period that is not triggered unless and until the Secretary formally determines that a particular claim is not suitable for litigation and/or submits a proposed legislative resolution to Congress. "So long as a listed claim is neither acted upon nor formally rejected by the Secretary, it remains live." *Oneida II*, 470 U.S. at 243. Because the Secretary included the Cayuga claim on the first of the lists prepared and published in accordance with the 1982 Act, and did not subsequently identify the claim as unsuitable for litigation or propose a legislative resolution, the complaints of the Tribes and of the United States were filed within the limitations period enacted by Congress.

"Laches within the term of the statute of limitations is no defense at law." *United States* v. *Mack*, 295 U.S. 480, 489 (1935). Respect for that principle is particularly appropriate here. More difficult issues conceivably might be posed by a case that, while literally encompassed by the terms of a statutory limitations period, involved a form and degree of delay

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[3] Congress further provided in Section 2415 that "[n]othing herein shall be deemed to limit the time for bringing an action to establish the title to, or the right of possession of, real and personal property." 28 U.S.C. 2415(c); see *Oneida II*, 470 U.S. at 243-244 n.15.

[4] For claims that are not included on either of the two lists, the 1982 Act required that any suit be brought within 60 days after the publication of the second list. See 28 U.S.C. 2415(a) and (b); 1982 Act § 5(a), 96 Stat. 1978.

and resulting prejudice that Congress could not have foreseen. In the instant case, however, the factors on which the court of appeals relied in finding laches to be applicable (see App. 21a) are not distinctive to the Cayuga claims, but are *characteristic* features of the suits that the 1982 Act and its statutory predecessors were intended to address. The legislative history accompanying the various extensions of the applicable limitations period shows that Congress was aware of the existence of ancient claims such as the one at issue here and intended to preserve them.[5]

The 1982 Act in particular reflects Congress's considered judgment as to the appropriate balance between the competing interests implicated by cases like this one. The 1982 Act established a detailed scheme under which the initial identification of potentially valid claims is entrusted to Executive Branch officials, after which a short (one-year) limitations period is triggered by an Executive Branch determination that a particular listed claim is unsuitable for litigation. With respect to the Cayugas' land claim, the Executive Branch has made no such determination but instead has intervened in the pending suits on behalf of the United States and in support of the Tribes. In ordering the land claims dismissed on the ground of laches, the court of appeals simply re-struck the balance between competing interests that Congress had fashioned, and it did so notwithstanding the Executive Branch's conclusion—reflected in the United States' filing of its com-

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[5] See, *e.g.*, S. Rep. No. 1253, 92d Cong., 2d Sess. 2, 4-5 (1972); H.R. Rep. No. 375, 95th Cong., 1st Sess. 2-4, 6-7 (1977); H.R. Rep. No. 807, 96th Cong., 2d Sess. 9 (1980); S. Rep. No. 569, 96th Cong., 2d Sess. 3 (1980). Indeed, Congress passed the 1982 Act eight years after this Court held in *Oneida I* that suits like this one state claims arising under federal law. At the time of the 1982 Act's passage, moreover, Congress had already passed several settlement laws resolving tribal land claims in Maine and Rhode Island that stemmed from events occurring early in the Nation's history. See *Oneida II*, 470 U.S. at 253.

plaint in intervention in 1992, and in the government's continued participation as a plaintiff during the ensuing years—that the suit should be allowed to go forward (and should be resolved in the Tribes' favor). Like the borrowing of a state statute of limitations that this Court disapproved in *Oneida II*, the court of appeals' invocation of laches as a ground for dismissal here is a "violation of Congress' will" as expressed in the 1982 Act and its statutory predecessors. See *Oneida II*, 470 U.S. at 244; cf. *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) ("Courts of equity cannot, in their discretion, reject the balance that Congress has struck in a statute.").

C. The Court Of Appeals' Application Of Laches To The Claims Of The United States Is Particularly Unwarranted

The court of appeals' application of laches to the claims brought by the United States is particularly unwarranted. This Court's precedents make clear that the United States is not subject to laches when acting in its sovereign capacity. See, *e.g.*, *United States* v. *California*, 332 U.S. 19, 39-40 (1947); *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940); *United States* v. *Beebe*, 127 U.S. 338, 344 (1888). This Court has indicated in dictum that laches may apply to the federal government when the United States sues purely as a participant in commerce rather than as a sovereign actor. See *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 367, 369 (1943) (applying to the United States the rule that a drawee's failure to give prompt notice when it becomes aware of forgery may preclude recovery in court, on the ground that "[t]he United States as drawee of commercial paper stands in no different light than any other drawee"). But even assuming that dictum reflects an accurate statement of current law, it is wholly inapplicable here. In intervening in this action to redress violations of the Trade and Intercourse Act and the

Treaty of Canandaigua, the United States did not act to vindicate the sort of commercial interest that might form the basis for an analogous private suit. Rather, it fulfilled its sovereign responsibilities both as trustee for the Tribes and as guardian of the larger national interest.

In *Heckman* v. *United States*, 224 U.S. 413, 437 (1912), this Court explained, with specific reference to statutory restrictions on the alienation of Indian lands, that, "[w]hile relating to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is distinctly an interest of the United States. * * * Out of its peculiar relation to these dependent peoples sprang obligations to the fulfillment of which the national honor has been committed." The Court further observed that "[a] transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States." *Id.* at 438 (internal quotation marks omitted); see *United States* v. *Minnesota*, 270 U.S. 181, 194 (1926) (interest of the United States in disputes concerning tribal land "arises out of its guardianship over the Indians and out of its right to invoke the aid of a court of equity in removing unlawful obstacles to the fulfillment of its obligations; and in both aspects the interest is one which is vested in it as a sovereign"); *Wilson* v. *Omaha Indian Tribe*, 442 U.S. 653, 657 n.1 (1979); *Moe* v. *Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 473 (1976).[6]

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[6] This Court has explained that "[t]he obvious purpose [of the Trade and Intercourse Act] is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress, and to enable the Government * * * to vacate any disposition of their lands made without its consent." *Federal Power Comm'n* v. *Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960). The Trade and Intercourse Act was enacted not only to protect Indian interests, but also to safeguard the national interest by "prevent[ing]

Indeed, in reaffirming the established rule against application of laches to the United States, this Court has explained that "state notions of laches and state statutes of limitations have no applicability to suits by the Government, *whether on behalf of Indians or otherwise*. This is so because the immunity of the sovereign from these defenses is historic. Unless expressly waived, it is implied in all federal enactments." *Board of Comm'rs* v. *United States*, 308 U.S. 343, 351 (1939) (emphasis added; citations omitted). The court of appeals' effort to distinguish for these purposes between state and federal laches defenses (see App. 26a) is unavailing. The rule against applying laches to suits by the government reflects separation-of-powers principles, not merely precepts of federalism. Because the inapplicability of laches defenses to suits by the United States rests on an "immunity" that must be "expressly waived," the established rule is not subject to judge-made exceptions.[7]

The court of appeals' approach is particularly inappropriate because Congress, far from expressly authorizing the application of laches doctrine to government suits of this character, has specifically addressed the subject of tort actions "for money damages brought by the United States * * * for or on behalf of a recognized tribe, band, or group of American

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Indian unrest over encroachment by white settlers on Indian lands." *Golden Hill Paugussett Tribe* v. *Weicker*, 39 F.3d 51, 56 (2d Cir. 1994).

[7] This Court has indicated that, when the Equal Employment Opportunity Commission (EEOC) files suit to obtain backpay for an individual victim of unlawful discrimination, the court in fashioning an appropriate remedy may take into account the EEOC's untoward delay in commencing the action. *Occidental Life Ins. Co.* v. *EEOC*, 432 U.S. 355, 372-373 (1977). Nothing in *Occidental Life* suggests, however, that an EEOC enforcement action may be dismissed at the outset on the ground of laches. In the instant case, the district court reduced the amount of its prejudgment interest award based in part on the "failure of the U.S. to intervene or to seek to protect the Cayuga's interests prior to 1992." App. 320a; see p. 8, *supra*.

Indians, including actions relating to allotted trust or restricted Indian lands," 28 U.S.C. 2415(b), and has enacted a statute of limitations under which the United States' complaint in intervention in this case was timely filed. See pp. 21-25, *supra*. This Court in *Mack*, after stating that "[l]aches within the term of the statute of limitations is no defense at law," observed that "[l]least of all is it a defense to an action by the sovereign." 295 U.S. at 489. The court of appeals' own view (App. 25a) that the purportedly "egregious" nature of the government's delay supports dismissal of its complaint—notwithstanding the clear violation of law by the State and the strong equities on behalf of the Tribes—flies in the face of Congress's considered decision to allow suits like this one to go forward. The court of appeals also attached significance to the fact that, "though there is now a statute of limitations, there was none until 1966—*i.e.*, until one hundred and fifty years after the cause of action accrued." *Ibid.* (citation omitted). But neither the prior absence of any applicable statute of limitations, nor the possibility that a hypothetical pre-1966 suit might have been dismissed altogether on the ground of laches (a speculative proposition for which the court of appeals offered no support), can insulate the State from suit by the United States today or justify the court of appeals' disregard for Congress's *current* judgment as to the timing requirements that should apply in litigation of this nature.

D. The Decision Below Is Of Substantial Practical And Legal Importance

The court of appeals' decision is both practically and legally significant. This Court's decisions in *Oneida I* and *Oneida II* induced many Tribes to bring suit, or to continue to pursue ongoing litigation, to obtain redress for the loss of land guaranteed to them by federal statutes and treaties. The instant case was commenced more than 25 years ago and has

consumed substantial resources of the parties and the courts, and at least five other suits involving substantial tribal land claims in the State of New York are currently pending in federal courts within the Second Circuit.[8] The $248 million damages award in the instant case attests to the practical importance of this body of litigation.

The court of appeals' apparent intent is to terminate all of these pending cases on the ground that the Tribes' complaints were "subject to dismissal *ab initio*." App. 22a. If left unreviewed, the court's decision will render superfluous the substantial expenditures of time and resources consumed in the lawsuits up to this point; it will leave the United States and the affected Tribes without any remedy for violations of law that, while "ancient," were indisputably "grave" (*City of Sherrill*, 125 S. Ct. at 1491 n.11), and that rendered the State's purchases invalid under the terms of the Trade and Intercourse Act; and it will wholly prevent the United States from fulfilling its responsibilities to the Tribes. In addition, the court of appeals' serious legal errors—and, in particular, its holding that the United States is subject to the defense of laches when it sues to redress violations of federal Indian law—may have deleterious impacts in future litigation. Review by this Court is warranted to prevent those harms.

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[8] *Oneida Indian Nation of New York* v. *County of Oneida*, No. 74-CV-187 (N.D.N.Y.); *Stockbridge Munsee Cmty.* v. *New York*, No. 86-CV-1140 (N.D.N.Y.); *St. Regis Mohawk Tribe* v. *New York*, 89-CV-829 (N.D.N.Y.); *Seneca Nation of Indians* v. *New York*, No. 93-CV-688A (W.D.N.Y.); *Onondaga Nation* v. *New York*, No. 05-CV-314 (N.D.N.Y.).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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