No. _____

In the Supreme Court of the United States

STATE OF ALASKA, ET AL.,
Petitioners,
v.
UNITED STATES OF AMERICA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the United States can regulate fishing on Alaska's navigable waters under the Alaska National Interest Lands Conservation Act, when its statutory authority is limited to "public lands" and that term is defined as "lands, waters, and interests therein … the title to which is in the United States."

PARTIES TO THE PROCEEDING

Petitioners are the State of Alaska; the Alaska Department of Fish and Game; and Doug Vincent-Lang, in his official capacity as Commissioner of the Alaska Department of Fish and Game. Petitioners were defendants below.

Respondent is the United States of America, which was the plaintiff below.

Respondents also are the Kuskokwim River Inter-Tribal Fish Commission; the Association of Village Council Presidents; Betty Magnuson; Ivan M. Ivan; Ahtna Tene Nene; Ahtna, Inc.; and the Alaska Federation of Natives. These parties were intervenor plaintiffs below.

RELATED PROCEEDINGS

United States District Court (D. Alaska):

United States v. Alaska, No. 22-cv-54-SLG (Mar. 29, 2024) (order granting summary judgment to plaintiff and intervenor plaintiffs)

United States v. Alaska, No. 22-cv-54-SLG (Apr. 1, 2024) (judgment for plaintiff and intervenor plaintiffs)

United States Court of Appeals (9th Cir.):

United States v. Alaska, No. 24-2251 (Aug. 20, 2025) (opinion)

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INTRODUCTION

This Court twice granted certiorari to settle an issue of exceptional importance: whether the federal government can regulate Alaska's navigable waters—specifically, by banning hovercrafts—when the waters flowed through a federal preserve. *See Sturgeon v. Frost*, 577 U.S. 424 (2016); *Sturgeon v. Frost*, 587 U.S. 28 (2019). In two unanimous opinions, the Court held that Congress gave the federal government no such power. Parsing the Alaska National Interest Lands Conservation Act, the Court concluded that Alaska's navigable waters are not "public lands," defined as "lands, waters, and interests therein … the title to which is in the United States." 16 U.S.C. §3102. The United States cannot have "title" to a reserved water right, and even if it could, that would let it only "take or maintain [a] specific 'amount of water,'" not assert "plenary authority" over the waters. *Sturgeon II*, 587 U.S. at 44-45.

Lurking in the background of *Sturgeon* was an even bigger issue. In a case known as *Katie John I*, the Ninth Circuit had held that Alaska's navigable waters were "public lands" under the reserved-water-rights doctrine, and so the United States could impose a subsistence fishing priority on those waters under Title VIII of ANILCA. If that interpretation of "public lands" sounds at odds with *Sturgeon*, that's because it is. But this Court avoided that irreconcilability in *Sturgeon* after parties urged the Court to reserve judgment on *Katie John* for another day.

That time has come. The United States has continued to issue orders regulating fishing on part of the

Kuskokwim River, a navigable river that runs through a federal refuge. Despite *Sturgeon*, the Ninth Circuit held in the decision below that ANILCA empowers the United States to do so. *Sturgeon* was no obstacle, according to the court, because *Sturgeon* interpreted "public lands" in *Title I* of ANILCA. That same term, "public lands," could have a different meaning in *Title VIII*, even though ANILCA's definition of "public lands" applies "[a]s used in this Act" "except [for] titles IX and XIV." 16 U.S.C. §3102.

The decision below squarely conflicts with *Sturgeon*. ANILCA carefully defines "public lands" and uses the term more than 200 times. It is inconceivable that Congress envisioned fluctuating meanings of this defined term. And the Ninth Circuit never explained how the United States could have "title" to a reserved water right. No different than in *Sturgeon*, Alaska's navigable waters "did not become subject to new regulation by the happenstance of ending up within a national park." *Sturgeon II*, 587 U.S. at 58.

Getting this right is critical for Alaska. Federal mismanagement of Alaska's fisheries was a key driver of Statehood nearly 70 years ago. Alaska's fisheries are among the most bountiful in the world. They sustain the livelihoods of tens of thousands of Alaskans, creating jobs through commercial fishing and food sources through subsistence fishing. To preserve these resources, Alaska must comprehensively regulate its waters. But the decision below deprives Alaska of this control, perpetuates a broken regulatory regime, and disregards the text that Congress enacted. The Court should grant certiorari and reverse.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 2025 WL 2406531, --- F.4th ---, and is reproduced in the Appendix at App.1a-40a. The district court's opinion is reported at 2024 WL 1348632 and is reproduced at App.41a-74a.

JURISDICTION

The Ninth Circuit's judgment was entered on August 20, 2025. App.1a. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are set out in the appendix at App.103a-105a. *See* 16 U.S.C. §§3102, 3114.

STATEMENT OF THE CASE

A. The Alaska Statehood Act

The United States purchased Alaska from Russia in 1867. It thereby acquired in a "'single stroke' 365 million acres of land—an area more than twice the size of Texas." *Sturgeon II*, 587 U.S. at 33. For the next 90 years, the United States owned and regulated all of Alaska's lands and waters. *Id.* By the 1950s, Alaskans longed for statehood. *Id.* at 34. Among the major reasons why Alaskans sought statehood was the desire to gain control over their fisheries. For years, distant federal officials had mismanaged Alaska's fisheries. Most notably, the federal government had failed to stop outside interests from installing fish traps,

which had caused Alaska's fisheries to be "pitifully depleted." *Metlakatla Indian Cmty. v. Egan*, 362 P.2d 901, 915 (Alaska 1961).

The 1958 Alaska Statehood Act, 72 Stat. 339, made Alaska the country's 49th State. By incorporating the Submerged Lands Act, the Statehood Act gave Alaska "'title to and ownership of the lands beneath navigable waters.'" *Sturgeon II*, 587 U.S. at 34-35 (quoting 43 U.S.C. §1311). Alaska's ownership of these lands brought with it "regulatory authority over 'navigation, fishing, and other public uses' of those waters." *Id.* at 35.

One of those rivers was the Kuskokwim River. Running more than 700 miles, the Kuskokwim River is the longest free-flowing river in the United States that is contained entirely within one state. Because the entire Kuskokwim River is navigable, App.20a, 84a, the State owns the lands beneath the river and thus has "regulatory authority over 'navigation, fishing, and other public uses'" on the river, *Sturgeon II*, 587 U.S. at 34-35. Five types of salmon—Chinook, chum, sockeye, coho, and pink—return to the Kuskokwim every year. App.85a. Ever since statehood, the State has been managing and protecting fish in the Kuskokwim River and other navigable waters in Alaska. App.87a.

Alaskans have long engaged in subsistence fishing, essentially the customary and traditional practice of catching fish for personal or family consumption or for trade and sharing. *See* AS §16.05.940(34). Many Alaskans depend on subsistence fishing to feed their families, and they consider the practice an essential

element of their culture and heritage. CA9-ER-88, 242.[1] Alaska Natives have relied on subsistence practices "for thousands of years," and, in more recent history, non-Natives have "come to rely on natural resources for their social and economic livelihoods as well." CA9-ER-242. Subsistence fishing occurs along the entire Kuskokwim River. App.84a.

In 1978, Alaska adopted a law giving subsistence fishing a priority over other types of fishing (*e.g.*, commercial or sport fishing) in times of scarcity. *See* ch. 151 SLA 1978; *McDowell v. State*, 785 P.2d 1, 4 (Alaska 1989). Alaska's law protected subsistence fishing throughout the State, including on navigable waters. *See* ch. 151 SLA 1978. All Alaskans (both urban and rural) were eligible to engage in subsistence fishing if they met the requirements. *McDowell*, 785 P.2d at 4.

B. The Alaska National Interest Lands Conservation Act

In 1980, Congress passed the Alaska National Interest Lands Conservation Act. *See* Pub. L. 96-487, 94 Stat. 2371 (Dec. 2, 1980). ANILCA sought to "'balance' two goals, often thought conflicting." *Sturgeon II*, 587 U.S. at 36. (quoting 16 U.S.C. §3101(d)). The Act was designed to protect "the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska" while also providing

[1] "CA9.ER" refers to the Excerpts of Record filed with the Ninth Circuit. *See* CA9.Dkt.14.

an "adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." 16 U.S.C. §3101(d).

ANILCA accomplishes these goals through fifteen titles. ANILCA, among other things, created and expanded national parks and wildlife refuges (Titles II and III), established new conservation and recreation areas (Title IV), expanded national forests and "wild and scenic" rivers (Titles V and VI), designated new national wildernesses (Title VII), created a rural hunting and subsistence priority on public lands (Title VIII), and designated places where the potential for oil, gas, and other minerals must be studied (Title X). The new preserves, refuges, and other areas created by ANILCA are called "conservation system units." §3102(4). One of these units is the Yukon Delta National Wildlife Refuge, through which part of the Kuskokwim River runs. Pub. L. 96-487, §303(7), 94 Stat. at 2392.

In Section 102, entitled "Definitions," Congress defined the term "public lands." 16 U.S.C. §3102. "Public lands" are "lands, waters, and interests therein … the title to which is in the United States." §3102(1)-(3); *see Sturgeon II*, 587 U.S. at 1076-77. Congress mandated that this definition applies in every title of ANILCA "except … in titles IX and XIV." 16 U.S.C. §3102.

In Title VIII, Congress established a subsistence hunting and fishing priority on "public lands" for rural Alaska residents. §3114. ANILCA instructs that "the

taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes." *Id.* Unlike the State's subsistence law, ANILCA gave a subsistence priority only to "rural" residents and applied the priority only to a subset of lands and waters in Alaska ("public lands"). *Id.*

Congress authorized Alaska (instead of the federal government) to implement ANILCA's subsistence priority if the State adopted laws consistent with ANILCA. §3115(d). To gain this power, the State amended its law to give a subsistence hunting and fishing priority only to "rural" residents. *See McDowell*, 785 P.2d at 4. But in 1989, the Alaska Supreme Court in *McDowell* held that this new provision of the law violated the Alaska Constitution's right of equal access to fish and game because it gave a subsistence preference to "rural" residents. *Id.* at 4-9; *see id.* at 10-11 (describing the "rural" distinction as an "extremely crude" delineation that excludes "substantial numbers of Alaskans … who have legitimate claims as subsistence users"). As a consequence, all Alaskans (not just "rural" Alaskans) were again eligible to engage in subsistence fishing under state law. *Id.* at 9. When Alaska declined to amend its constitution to override *McDowell*, implementation of ANILCA's subsistence priority transferred to the federal government in 1990. App.7a.

C. *Totemoff* and the *Katie John* Litigation

The federal government initially recognized that Alaska's navigable waters are not "public lands." That is because "public lands" include only those lands "the

title to which is in the United States," and the United States "does not generally own title to the submerged lands beneath navigable waters in Alaska." 57 Fed. Reg. 22940, 22942, 22952 (May 29, 1992). But the United States later reversed its position in litigation, asserting that it could regulate navigable waters "in which the federal government has an interest under the reserved water rights doctrine." *Alaska v. Babbitt* ("*Katie John I*"), 72 F.3d 698, 701 (9th Cir. 1995). Under the reserved-water-rights doctrine, "'[w]hen the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.'" *Sturgeon II*, 587 U.S. at 43.

In 1995, the Alaska Supreme Court rejected the federal government's new interpretation, holding that ANILCA "does not give the federal government power to regulate hunting and fishing in navigable waters." *Totemoff v. State*, 905 P.2d 954, 965 (Alaska 1995). Because the Submerged Lands Act "gives Alaska ownership of, title to, and management power over … lands beneath the navigable waters of Alaska," these waters could never be "public lands." *Id.* at 964. The reserved-water-rights doctrine had no relevance because "reserved water rights are not the type of property interests to which title can be held." *Id.* at 965.

The Ninth Circuit saw it differently. In *Katie John I*, the Ninth Circuit deferred under *Chevron* to the federal government's new interpretation, holding that "public lands include those navigable waters in

which the federal government has an interest under the reserved water rights doctrine." 72 F.3d at 701, 703-04. The Ninth Circuit didn't claim to find the "best reading" of the statute, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024), only that the agencies' interpretation was "reasonable" and a "permissible construction of the statute," *Katie John I*, 72 F.3d at 702-04. Judge Hall dissented, concluding that navigable waters were not "public lands" because "*Alaska* has title to its navigable waters under the Submerged Lands Act." *Id.* at 706.

Four months after *Katie John I*, Congress adopted an appropriations act that included a provision prohibiting the federal government from using any funds to "assert jurisdiction, management, or control over [Alaska's] navigable waters." Pub. L. No. 104-134, §336, 110 Stat. 1321 (Apr. 26, 1996). Congress included similar provisions in three subsequent appropriations acts. *See* Pub. L. 104-208, §317, 110 Stat. 3009 (Sept. 30, 1996); Pub. L. 105-83, §316, 111 Stat. 1543 (Nov. 14, 1997); Pub. L. 105-277, Div. A, §339, 112 Stat. 2681 (Oct. 21, 1998). Congress sought to give Alaska time to amend its constitution so the State could continue to implement ANILCA. *See, e.g.*, 143 Cong. Rec. S11258, S11259 (Oct. 28, 1997) (Sen. F. Murkowski) (provisions would avoid the "disaster of Federal control" over "the management of [Alaska's] fish and game"). These appropriations acts did not "comprehensively revis[e]" ANILCA, *Alexander v. Sandoval*, 532 U.S. 275, 292 (2001), and no legislator or committee ever suggested that the acts would codify *Katie John I*. When the State failed to amend its

constitution, the moratorium expired in October 1999. Pub. L. 105-277, Div. A, §339(b)(2).

Because *Katie John I* was an interlocutory decision, the case had returned to the district court for further litigation. On appeal, the Ninth Circuit voted to hear the case initially en banc. In a sharply divided opinion, the Ninth Circuit declined to reconsider *Katie John I*. Six judges rejected the earlier panel's reliance on the reserved-water-rights doctrine. *See John v. United States* ("*Katie John II*"), 247 F.3d 1032, 1038 (9th Cir. 2001) (Tallman, J., concurring in the judgment); *id.* at 1046-47 (Kozinski, J., dissenting). Reversing the State's long-held position, Alaska Governor Tony Knowles declined to seek certiorari. App.16a.[2]

Because ANILCA lets only "rural" residents engage in subsistence fishing, many non-rural individuals with "longstanding cultural ties" to particular waters could no longer engage in subsistence fishing on waters where the federal government asserted authority. *McDowell*, 785 P.2d at 5. *Katie John* also created a "balkanized" regulatory regime, where the State could regulate only parts of its navigable waters. App.92-93. This lack of control caused numerous management problems during times of scarcity. *E.g.,*

[2] In 2013, the Ninth Circuit upheld federal regulations identifying which navigable waters are "public lands" under the reserved-water-rights doctrine. *See John v. United States*, 720 F.3d 1214 (9th Cir. 2013). Known as *Katie John III*, the Ninth Circuit did not reconsider whether navigable waters could be "public lands." *Id.* at 1245.

App.102-03 (overfishing and fewer subsistence fishing opportunities).

D. *Sturgeon v. Frost*

Katie John II was not the last word on the meaning of "public lands." In 2019, this Court issued its opinion in *Sturgeon v. Frost*. There, an Alaskan hunter, John Sturgeon, was hunting moose along the Nation River in Alaska. To reach his favorite hunting ground, he would travel by hovercraft over part of the Nation River that flows through a federal preserve. On one of his trips, park rangers told him that a federal regulation prohibited the use of hovercrafts on rivers within any federal preserve or park. Sturgeon sued, arguing that the Park Service had "no power to regulate lands or waters that the Federal Government does not own" and the Nation River was not "public land." *Sturgeon II*, 587 U.S. at 32. The Park Service, in response, argued that the part of the Nation River that ran through a federal reserve was "public land" under *Katie John I* and the reserved-water-rights doctrine. The Ninth Circuit agreed, holding that it was "bound under [its] *Katie John* precedent" to find that the Nation River was "public land." *Sturgeon v. Frost*, 872 F.3d 927, 934 (9th Cir. 2017). Because "ANILCA's definition of 'public lands' applies throughout the statute," the Ninth Circuit explained, it would be "anomalous" if the definition of "public lands" in Title VIII of ANILCA "employ[ed] a different construction of 'public lands' than applicable elsewhere in ANILCA." *Id.* Judges Nguyen and Nelson concurred in the judgment, writing separately to explain why *Katie John I*'s interpretation of "public lands" was wrongly decided. *Id.* at 937-38.

This Court granted certiorari and unanimously reversed. To start, all agreed that the Nation River was not "land" or "waters" the "title to which is in the United States." 16 U.S.C. §3102(1)-(3). The United States does not have "title" to "the lands beneath" navigable waters because "the Submerged Lands Act gives each State 'title to and ownership of the lands beneath [its] navigable waters.'" *Sturgeon II*, 587 U.S. at 42 (quoting 43 U.S.C. §1311). And the United States does not have "title" to the river itself because "running waters cannot be owned—whether by a government or by a private party." *Id.*

That left the question of whether the United States has "title" to an "interest" in the Nation River under the reserved-water-rights doctrine. *Id.* at 43. The Court found "no evidence that the Congress enacting ANILCA" intended to allow the United States to "hold 'title' … to reserved water rights." *Id.* at 43-44. Reserved water rights instead are "'usufructuary' in nature, meaning that they are rights for the Government to use—whether by withdrawing or maintaining—certain waters it does not own." *Id.* at 43. Relying on the Alaska Supreme Court's decision in *Totemoff*, the Court emphasized the "common understanding" that "'reserved water rights are not the type of property interests to which title can be held.'" *Id.* at 44 (quoting *Totemoff*, 905 P.2d at 965).

Moreover, the Court explained, even if it were possible for the United States to hold "title" to reserved water rights, that interest would "merely enabl[e] the Government to take or maintain the specific 'amount

of water'—and 'no more'—required to 'fulfill the purpose of [its land] reservation.'" *Id.* But hovercrafts do not "deplete or divert any water," and the hovercraft rule was designed to address "concerns not related to safeguarding the water." *Id.* at 45 (cleaned up). So even if the United States could hold "title to a reserved water right," ANILCA still could not stop Sturgeon from using his hovercraft on the river. *Id.*

Whether *Sturgeon* would abrogate *Katie John I* was a major point of contention among the parties and amici. Before this Court, the United States repeatedly argued that Sturgeon's position was irreconcilable with *Katie John I*. Because ANILCA "contains a definitional section that sets out the meaning of 'public lands' throughout ANILCA," the United States explained, the statute "forecloses" the argument that the term "public lands" can be given "one meaning in the context of the subsistence-use-related sections of ANILCA and a different meaning" elsewhere. United States Br. 49, *Sturgeon II* (U.S. Sept. 11, 2018); *see* United States Br. in Opp. 17, *Sturgeon II* (U.S. May 7, 2018) (same). The United States' amici similarly argued that a ruling for Sturgeon would "undermine the foundation on which the *Katie John* rulings stand" because "there is no separate definition of 'public lands' for purposes of Title VIII" and so any "attempt to distinguish the definition of 'public lands' for subsistence and other purposes is not persuasive." Alaska Native Subsistence Users Amici Curiae Br. 22-23, *Sturgeon II* (U.S. Sept. 18, 2018); *see also Sturgeon II* Tr. 27-28 (Sotomayor, J.) ("I'm having a hard time accepting your position in this case with your position that the *Katie John* decisions should be retained. I don't know

how we can give different meaning to public lands in two provisions of the same Act.").

In response, both Sturgeon and the State of Alaska (under a prior administration) argued that there was "no need for th[e] Court to address the *Katie John* line of decisions" because it was "beyond the scope of the question presented." Reply Br. 20-21, *Sturgeon II* (U.S. Oct. 11, 2018); *see* Alaska Amicus Br. 29, *Sturgeon II* (U.S. Aug. 14, 2018) (same). The question presented "concern[ed] only Mr. Sturgeon's non-subsistence use of the Nation River," which did not "implicate Title VIII." Alaska Am. Br. 29. This Court agreed with Sturgeon and saw no need to address whether "public lands" had the same meaning in Title VIII. In a footnote, the Court said that ANILCA's subsistence-fishing provisions were "not at issue in this case" and so the Court was "not disturb[ing] the Ninth Circuit's holdings." *Sturgeon II*, 587 U.S. at 45 n.2.

E. Factual Background

Following *Sturgeon*, the United States continued to assert authority over Alaska's navigable waters, including the Kuskokwim River. App.93a. But the elephant in the room—whether *Katie John I* was still good law—never emerged because it was "[f]ederal policy to defer to State management … whenever possible." App.93a; CA9.ER-254. The State manages salmon stocks in a "'conservative manner'" to achieve three primary objectives: (1) maintain the salmon population by allowing salmon to "escape" upriver to spawn, (2) provide a subsistence priority for all Alaskans, and (3) offer commercial, sport, and personal-

use fishing opportunities when harvestable surpluses exist. App.82a, 87a-91a.

But then the federal government stopped deferring to the State's management of its fisheries in the spring of 2021. As the salmon season approached, the State projected a low supply of Chinook salmon in the Kuskokwim River. App.93a. The State issued emergency orders to restrict all fishing (except limited subsistence fishing) along the entire Kuskokwim River. App.94-95a; *e.g.*, CA9.ER-346–50. But a federal official in Alaska issued contradictory orders regulating fishing on the part of the Kuskokwim River within the Yukon Delta National Wildlife Refuge. App.94a; *e.g.*, CA9.ER-343–45.

The State and federal orders conflicted. Per its constitution, *see McDowell*, 785 P.2d at 9, the State authorized subsistence fishing for all Alaskans who met the criteria, but the federal government limited subsistence fishing to just "rural" Alaskans, App.94a-95a. The federal orders thus prohibited individuals with "cultural ties to the Kuskokwim fishery" from returning "'home'" to engage in subsistence fishing. App.94a-95a; CA9.ER-410. The State also took a more cautious approach, typically waiting for additional salmon-run data before issuing its orders. App.94a-95a; App.100a-101a (criticizing federal authorization of fishing as "'premature'" and "'irresponsible management'").

F. Proceedings Below

In May 2022, the United States sued the State of Alaska. It sought a declaration that the State's 2021

and 2022 orders were invalid and an injunction preventing the State from issuing orders "interfering with or in contravention of federal orders addressing ANILCA Title VIII and applicable regulations." Dist.Ct.Dkt.1 at 24; *see* App.54a (discussing the district court's jurisdiction). Given the importance of the issues at stake, four sets of plaintiffs were allowed to intervene, with each group filing its own complaint against the State. App.23a. The district court granted summary judgment to the United States and the intervenors, concluding that the Kuskokwim River was "public land" under ANILCA because *Katie John I* remained good law. App.60a-61a.

The Ninth Circuit affirmed. App.40a. The court agreed that navigable waters were not "public lands" if it interpreted "public lands" in Title VIII as this Court interpreted that same term in Title I of ANILCA. App.25a. And the court recognized that "public lands" is a defined term and that "a word 'is presumed to bear the same meaning throughout a text.'" *Id.* The court thus agreed that there was "some tension between the *Katie John* Trilogy and *Sturgeon II*." App.40a.

Yet the Ninth Circuit found that *Katie John I* was still good law because the State had not met the "high standard" of showing that the opinion was "clearly irreconcilable" with *Sturgeon*. App.39a-40a. According to the Ninth Circuit, *Katie John I* and *Sturgeon* could be "reasonably harmonized" by giving the term "public lands" a different meaning in Title VIII than in the other parts of the statute. App.4a. "Congress in-

tended," the Ninth Circuit believed, to apply a subsistence priority to waters "within conservation system units" where rural users have "traditionally fished." App.30a, 32a. The court also concluded that Congress had "'accepted and ratified' *Katie John I's* reserved water rights interpretation" through the appropriations acts that paused federal enforcement of ANILCA. App.35a, 38a. The court never identified "'exceedingly clear language'" in ANILCA authorizing the federal government to regulate fishing on the State's navigable waters. App.39a (quoting *Sackett v. EPA*, 598 U.S. 651, 679 (2023)).

REASONS FOR GRANTING THE PETITION

The Court should hear this case because the Ninth Circuit has "decided an important question of federal law … in a way that conflicts with relevant decisions of this Court" and "with a decision by a state court of last resort." S.Ct.R. 10(a), (c).

The question presented is undeniably important. Upon entering the Union, Alaska gained the sovereign right to regulate "'navigation, fishing, and other public uses'" on its navigable waters. *Sturgeon II*, 587 U.S. at 34-35. This right was critical for the new State, which had endured years of federal mismanagement of its fisheries. The decision below not only strips the State of this sovereignty, but it perpetuates an arbitrary and confusing regulatory regime that has wreaked havoc on Alaska's navigable waters. To effectively manage its fisheries, the State must regulate the *entire* river. But the decision below allows the federal government to override the State's authority on portions of the State's rivers running through federal

conservation system units. This segregated authority has led to overfishing, deprived rural residents upstream (both Native and non-Native) of an equal opportunity to participate in subsistence fishing, and prevented others from returning home to practice their culture and traditions.

The decision below also squarely conflicts with both this Court's and the Alaska Supreme Court's precedent. Though *Sturgeon* had no need to address Title VIII of ANILCA, its interpretation of "public lands" is irreconcilable with the decision below. If navigable waters are not "public lands" just because they run through a conservation system unit for purposes of Title I, as this Court has already unanimously held, they are not "public lands" for purposes of Title VIII either. The United States cannot hold "title" to reserved water rights and, even if it could, such rights would never give the United States "plenary authority" to regulate a State's navigable waters. 587 U.S. at 44-45. Vague notions of Congress's "purpose" cannot override the plain text, especially when there is no "'exceedingly clear language'" applying ANILCA to the State's navigable waters. *Sackett*, 598 U.S. at 679. The decision below also conflicts with the Alaska Supreme Court's decision in *Totemoff*, which—in a holding expressly adopted by this Court in *Sturgeon*—found that navigable waters are not "public lands" under ANILCA.

Finally, this Court will not get a better opportunity to resolve this issue. Though this issue has fes-

tered for decades, this Court has never had a clean petition to resolve it. This case squarely presents the issue. The Court should grant certiorari and reverse.

I. The petition raises a question of exceptional importance.

Certiorari is warranted because the decision below strips the State of Alaska of its sovereign right to regulate fishing on its navigable waters and perpetuates a flawed regulatory regime that has harmed the State's subsistence and conservation efforts.

1. The Court has long recognized that "[n]avigable waters uniquely implicate sovereign interests." *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 284 (1997). Under English common law, the Crown "held sovereign title to all lands underlying navigable waters." *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195 (1987). Because title to such land was critical to "the sovereign's ability to control navigation, fishing, and other commercial activity on rivers," this ownership was "considered an essential attribute of sovereignty." *Id.* When the Colonies became independent, they "claimed title to the lands under navigable waters within their boundaries as the sovereign successors to the English Crown." *Id.* at 196. Since then, all new States have entered the Union on an "equal footing" with the original 13 States and thus have gained "the right to control and regulate" those navigable waters. *Coyle v. Smith*, 221 U.S. 559, 573 (1911).

Nowhere is this sovereign power more important than in Alaska. Indeed, one of the main reasons Alaskans sought statehood was to gain regulatory control

of its fisheries. Before statehood, "[l]ax federal management" had led to an overexploitation of salmon, such that by "the 1950s Alaska salmon runs were declared a federal disaster." *Sustaining Alaska's Fisheries: Fifty Years of Statehood* 1, Alaska Dep't of Fish & Game (Jan. 2009), perma.cc/24FG-RJJA. The presence of fish traps throughout Alaska's navigable waters was a "despised symbol of outside control of the territory that inflamed Alaskans desire for statehood." *Id.* at 4; *see Metlakatla Indian Cmty. v. Egan*, 369 U.S. 45, 47 (1962). The "economy of the entire state [was] affected … by the plentitude of salmon in a given season," and so "preservation of [that] natural resource [was] vital to the state." *Metlakatla Indian Cmty.*, 362 P.2d at 915. For Alaskans, it was "inconceivable to think of a State being created without control of [fisheries]." Hearings on H.R. 331 & S. 2036, 81st Cong., 2d Sess., 486 (1950) (Gov. Ernest Gruening); *see also Statehood for Alaska: The Issues Involved and the Facts About the Issues*, Alaska Statehood Ass'n (Aug. 1946), perma.cc/6XXM-EYGH ("If Congress should attempt to withhold the fisheries, … Alaskans need not accept the gift of statehood, and undoubtedly would reject it at their election on ratification of the state constitution.").

The importance of this sovereign right hasn't lessened over time. Alaska is "one of the most bountiful fishing regions in the world," containing more than three million lakes, 12,000 rivers, and 6,640 miles of coastline. CA9.ER-41. Alaska's fisheries are one of the largest sources of private sector employment in Alaska, creating more than $5 billion in annual eco-

nomic activity and employing nearly 70,000 individuals. CA9.ER-41–43. Subsistence fishing also is critically important for tens of thousands of Alaskans. CA9.ER-65. For many Alaskans, subsistence fishing "is about more than food consumption and economics; it is directly tied to their history and central to their customs and traditions." *Id.* To preserve these benefits, Alaska's constitution requires that all fish be "utilized, developed, and maintained" for future generations. Alaska Const. art. VIII, §4.

This Court regularly grants certiorari to resolve disputes over a state's right to regulate its navigable waters. *E.g.*, *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614 (2013); *PPL Montana, LLC v. Montana*, 565 U.S. 576 (2012); *Idaho v. United States*, 533 U.S. 262 (2001)*; Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261 (1997)*; Utah Div. of State Lands*, 482 U.S. 193; *Montana v. United States*, 450 U.S. 544 (1981). And the Court has paid special attention to Alaska. Shortly after Alaska became a state, this Court granted certiorari to review whether Alaska could tax commercial fishing in its waters "because of the importance of the ruling to the new State of Alaska." *Alaska v. Arctic Maid*, 366 U.S. 199, 202 (1961). Since then, the Court has repeatedly heard cases dealing with the State's authority to regulate and use its natural resources—especially its submerged lands—to benefit Alaska's citizens. *See Sturgeon II*, 587 U.S. 28; *Sturgeon I*, 577 U.S. 424; *Alaska v. United States*, 545 U.S. 75 (2005); *United States v. Alaska*, 521 U.S. 1 (1997); *United States v. Alaska*, 503 U.S. 569 (1992); *United States v. Alaska*, 422 U.S. 184 (1975).

2. The harms to Alaska from losing regulatory control over its navigable waters are not theoretical. *Katie John I* created a "balkanized regulatory regime," where the State manages all navigable waters until the federal government asserts authority over segments of them during times of scarcity. App.92a-93a. But this is no way to run a railroad. Fisheries management is a highly complex enterprise. Myriad factors affect the salmon population, including weather, predators, habitat changes, food supply, and disease. *Understanding the Factors that Limit Alaska Chinook Salmon Productivity* at 9-10, ADF&G (Oct. 2022), perma.cc/2JH5-2YJ7. The Alaska Department of Fish and Game, which has an operating budget of $240 million, employs the most sophisticated methods available for measuring the salmon population, including "telemetry, sonar, aerial studies, test fisheries, weirs, and computer modeling." App.80a, 89a. For the State to meet its goals—maintaining a sustainable fish population while providing subsistence and other fishing opportunities when available—the State must manage the *entire* river system, not just bits and pieces. App.87a-93a.

The conflict over the Kuskokwim River epitomizes these problems. Only part of the Kuskokwim (about one-fourth) lies within a conservation system unit, which is in the lower portion of the river near the Bering Sea. App.84a-85a, 92a. It is critical that salmon escape the system unit and travel upstream. Most of the salmon spawning (laying and fertilizing of eggs) occurs above the system unit, and many rural communities live upriver and depend on subsistence fishing. *Id.*; CA9.ER-388–89. When the salmon population in

the Kuskokwim is low, the State seeks to conserve salmon and provide fishing opportunities along the entire river, not just within the system unit. App.92a, 102a. But the federal government focuses only on providing subsistence opportunities for the slice of the Kuskokwim within the system unit. App.92a-93a. This "regulatory narrowness" has led to overfishing within the conservation system unit and has deprived communities living upstream of an equal "opportunity to share in the harvest." App.92a-93a, 101a-102a.

The *Katie John* regime also harms non-rural residents (often Alaska Natives) who have cultural connections to an area and wish to engage in subsistence fishing. *McDowell*, 785 P.2d at 4. The Alaska Constitution guarantees that all Alaskans (not just rural residents) may participate in subsistence fishing when they meet the requirements. *Id.* at 9. Many Alaska Natives have cultural ties to rural fisheries but have been displaced to urban areas of the state for health, education, economic, or other reasons. App.83a, 96a; CA9.ER-410. Indeed, more than half of Alaska Natives live in non-subsistence areas of Alaska and thus cannot engage in subsistence fishing where the federal government asserts authority. CA9.ER-285. Alaska law thus provides greater subsistence fishing rights than federal law by ensuring that these individuals can return "home" to practice their culture and traditions. App.83a, 94a-95a; *see* CA9.ER-410; *McDowell*, 785 P.2d at 4 (discussing the "substantial numbers" of non-rural residents who "have lived a subsistence lifestyle and desire to continue to do so").

Importantly, correctly interpreting ANILCA would not lessen the subsistence rights of rural communities. Rural Alaskans who currently engage in subsistence fishing on navigable waters would have the *same right* to engage in subsistence fishing because Alaska law provides a subsistence fishing priority on waters throughout the State, including on navigable waters. AS §16.05.258; *see also* App.95a-96a (opening subsistence fishing to all Alaskans had "no meaningful impact on subsistence fishing for rural residents"). A uniform system of regulation would better protect Alaska's fisheries for all subsistence users.

3. Certiorari would be warranted even if this case only affected Alaska. But it doesn't. ANILCA's definition of "land" is not unique. The same definition appears in numerous federal land statutes. For example, the boundaries of the Grand Canyon National Park include "all lands, waters, and interests therein" within a certain area. 16 U.S.C. §228b(a) And the Secretary of the Interior must "administer the lands, waters and interests therein" that makeup the Golden Gate National Recreation Area. §460bb-3(a). These are just a few examples.[3] *Sturgeon* made clear that a reserved water right could never "give the Government plenary authority over the waterway to which it attaches," but would be limited to "tak[ing] or maintain[ing] [a] specific 'amount of water.'" 587 U.S. at 44. Not so in the Ninth Circuit. As long as a broad "statutory objective" can be found (often an easy task),

[3] *See also* 16 U.S.C. §§45f(b)(1), 90, 110c(c)(3), 121, 230a(b), 272(a), 273, 398d(a), 410bb(b)(1), 410ff-1(a), 410gg, 410ii-3(a), 410j, 410jj-3(c), 410mm-2(b), 460q-2(a)-(b), 410rr-7(c), 460z-6(a), 460aa-12, 460kk(c)(1).

App.4a, the federal government will be free to seize control of non-federal waters. Granting certiorari would preserve the limitations on the reserved-water-rights doctrine established in *Sturgeon*.

II. The decision below conflicts with decisions of this Court and the Alaska Supreme Court.

This Court's review is also warranted because the decision below conflicts with this Court's decisions—most obvious, *Sturgeon*—and the Alaska Supreme Court's precedent in *Totemoff*.

A. The decision below conflicts with this Court's precedent.

1. ANILCA is a comprehensive statute addressing how the United States will regulate "public lands" in Alaska. In Section 102, ANILCA carefully defines "public lands" as "lands, waters, and interests therein … the title to which is in the United States." 16 U.S.C. §3102(1)-(3). ANILCA expressly mandates that this definition will apply "[a]s used in this Act … except … in titles IX and XIV." *Id.*

In *Sturgeon*, this Court held that navigable waters running through a conservation system unit were not "public lands" under the reserved-water-rights doctrine. Because reserved water rights are "'usufructuary' in nature," they "'are not the type of property interests to which title can be held.'" 587 U.S. at 43-44 (quoting *Totemoff*, 905 P.2d at 965). The Court found "no evidence" that Congress intended "to use the term ['title'] in any less customary and more capacious

sense." *Id.* at 44. Moreover, even if the United States could hold "title" to a reserved water right, it still couldn't regulate the river under ANILCA. *Id.* at 44-45. Because a "reserved right, by its nature, is limited," the United States would not gain "plenary authority over the waterway to which it attaches." *Id.* at 44. This "interest" would "merely enabl[e] the Government to take or maintain the specific 'amount of water'—and 'no more'—required to 'fulfill the purpose of [its land] reservation.'" *Id.*

After *Sturgeon*, this case should have been easy. The Kuskokwim River is not "public land" because the United States cannot hold "title" to an "interest" in a reserved water right in the river. *Id.* at 43-44. And, even if it had this title, it would at most "support a regulation preventing the 'depletion or diversion' of waters in the River." *Id.* at 44-45. But subsistence fishing regulations do "nothing of that kind." *Id.* at 45. That means that "ANILCA changed nothing" and Alaska—not the United States—continues to have sovereign authority to regulate the river. *Id.* at 58.

True, this Court declined to resolve this issue in *Sturgeon* because Title VIII was "not at issue in this case." 587 U.S. at 45 n.2. But this Court's unanimous interpretation of ANILCA's terms in *Sturgeon* cannot be reconciled with the Ninth Circuit's *Katie John* rule. The Ninth Circuit believed that the term "public lands" could be given a different meaning in Title VIII than in the rest of ANILCA. App.4a, 25a. But that is not the "best reading" of the statute. *Loper Bright*, 603 U.S. at 400. There is a "natural presumption that identical words used in different parts of the same act

are intended to have the same meaning." *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932). And this presumption is at its apex where (as here) Congress explicitly defined a specialized term and expressly identified where it does and does not apply (all 15 titles, except titles IX and XIV). "'When a statute includes an explicit definition, [the Court] must follow that definition,' even if it varies from a term's ordinary meaning." *Tanzin v. Tanvir*, 592 U.S. 43, 47 (2020). As *Sturgeon* said, the statutory definition of "public lands" is "'virtually conclusive'" of the term's meaning. 587 U.S. at 56 (quoting Scalia & Garner, Reading Law: The Interpretation of Legal Texts 228 (2012)).

Here, ANILCA uses the term "public land" or "public lands" more than 200 times and the term appears in every title of the statute. It is used, among other ways, to determine the acreage and boundaries of parks, monuments, and preserves (Title II); establish and expand wildlife refuges (Title III); create conservation and recreation areas (Title IV); expand national forest lands (Title V); designate wilderness areas (Title VII); identify the lands where the subsistence priority applies (Title VIII); and pinpoint the places where the potential for oil, gas, and other minerals must be studied (Title X). Given the term's prevalence throughout the statute and its express (and detailed) definition, it is implausible that Congress wanted the term to have a loose and fluctuating meaning. As this Court has recognized, Congress was not "merely waving its hand in the general direction" of Alaskan lands and waters when it "defined the scope of ANILCA" to apply only to "public lands." *Amoco*

Prod. Co. v. Vill. of Gambell, AK, 480 U.S. 531, 548 (1987).

The Ninth Circuit thought this presumption could be overcome because the "context and objective of Title VIII" indicated that "Congress intended the rural subsistence priority to apply to the waters and to the fish populations that rural subsistence users have traditionally fished and depended upon within conservation system units." App.30a, 32a-33a (emphasis omitted). But this Court rejected a nearly identical argument in *Sturgeon*. Invoking "'the overall statutory scheme'" and "ANILCA's general statement of purpose," the federal government insisted "that ANILCA must at least allow it to regulate navigable waters." 587 U.S. at 55. This Court disagreed, stressing that ANILCA's "statements of purpose … cannot override [the] statute's operative language." *Id.* at 57 (cleaned up). This Court also rejected a similar purposive argument about Title VIII in *Amoco*. The Court found it "difficult to believe that Congress intended the subsistence protection provisions of Title VIII, alone among all the provisions in the Act, to apply to the [Outer Continental Shelf]," and this was "particularly implausible because the same definition of 'public lands' which defines the scope of Title VIII applies as well to the rest of the statute." 480 U.S. at 550-51.

The Ninth Circuit is wrong about ANILCA's "purpose" in any event. ANILCA balanced "conflicting" goals, *Sturgeon II*, 587 U.S. at 36, and the best way to give effect to the statute's purpose is to respect this "carefully drawn balance," *id.* at 52. Contra the Ninth

Circuit, Congress did not impose a subsistence priority on all waters where "rural subsistence users have traditionally fished … within conservation system units." App.32a. Congress created a subsistence priority *only* for "public lands." 16 U.S.C. §3114; *see also* §3111(4) (supporting "continued subsistence uses *on the public lands*") (emphasis added)); §3111(1) (supporting "the continuation of the opportunity for subsistence uses … *on the public lands*") (emphasis added)). "[I]f Congress wanted" to apply the subsistence priority to navigable waters, it "easily could have written" ANILCA to do that. *Burgess v. United States*, 553 U.S. 124, 130 (2008).

That ANILCA does not reach the State's navigable waters is not surprising given the regulatory regime in place when ANILCA was enacted. *Supra* p.5. Congress could limit ANILCA's reach to "public lands" because the State already provided a subsistence priority on navigable waters. *Id.* And ANILCA provided a meaningful complement to state law, even without covering navigable waters. The United States is the largest landowner in Alaska, owning an outstanding 60% of the State's total area (222 million acres). CA9.ER-169. ANILCA's subsistence priority includes not only hunting on federal lands but also subsistence fishing on non-navigable waters on federal lands and navigable waters running over land owned by the United States—countless lakes, rivers, ponds, streams, and the like that have long offered subsistence fishing opportunities. *See* 57 Fed. Reg. at 22941, 22951 (1992 regulations applying subsistence priority to "non-navigable waters located on all public lands" and "navigable waters located on certain public

lands"); *see also* Off. of Subsistence Mgmt., *Federal Subsistence Fisheries Regulations* at 60, 67, DOI (Apr. 1, 2021), perma.cc/J8DP-3Z5Z (discussing subsistence fishing opportunities for certain lakes and ponds). And if Congress missed any waters, *Sturgeon* pointed out the solution: ANILCA authorizes the United States "to buy from Alaska the submerged lands of navigable waters—and then administer them as public lands." 587 U.S. at 57.

Even assuming the Ninth Circuit correctly found the unspoken "purpose" of ANILCA, the court failed to provide a textual interpretation that makes sense. The Ninth Circuit never explained how navigable waters could be "lands, waters, and interests therein … *the title* to which is in the United States." 16 U.S.C. §3102(1)-(3) (emphasis added). *Sturgeon* says that reserved water rights are "usufructuary interests" and thus "'are not the type of property interests to which title can be held.'" 587 U.S. at 44. The panel below pointed back to *Katie John I*, but that opinion provides no help. The *Katie John I* court admitted that its decision was "inherently unsatisfactory" because it gave no "meaning to the term 'title' in the definition of the phrase 'public lands.'" 72 F.3d at 704. *Sturgeon* rejected this purposive approach to ANILCA and requires following the words Congress enacted.

2. Nor can the Ninth Circuit justify its atextual approach with speculation that Congress "ratified" *Katie John I* in the 1990s. App.33a-38a. Tellingly, this Court was presented with the same congressional ratification arguments in *Sturgeon* and declined to adopt

them. *See* United States Br. at 37-40, *Sturgeon II* (arguing that "Congress … ratified the Secretary's construction of 'public lands'" through the appropriations acts). They fare no better now.

When "Congress has not comprehensively revised a statutory scheme but has made only isolated amendments," this Court "ha[s] spoken … bluntly: It is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of [a] [c]ourt's statutory interpretation." *Alexander*, 532 U.S. at 292 (cleaned up). "The mere failure of a legislature to correct extant lower-court … or agency interpretations is not … a sound basis for believing that the legislature has 'adopted' them." Scalia & Garner 326.

Here, the appropriations acts did not "comprehensively revise" ANILCA—the statute was the same in 2000 as it was in 1995. What the Ninth Circuit called "substantive amendments to ANILCA," App.38a n.16, were all *repealed* a year later when Alaska did not amend its constitution to allow the State to implement ANILCA's rural subsistence priority. *See* Pub. L. 105-83, §316(d); Pub. L. 105-277, Div. A, §339(b)(2). Giving the State time to amend its constitution was all that these appropriations act provisions were designed to do. As Alaska Senator Frank Murkowski explained:

> [A]voiding a Federal takeover of fish and game management is simply critical in my State. When Alaska became a State, Alaskans were united in our desire to take over the management of our fish and game. Many

> Alaskans still have vivid memories of the disaster of Federal control …. The State, not the elusive Federal bureaucrats with no accountability to Alaskans, should manage our fish and game.

143 Cong. Rec. at S11259.

Appropriation acts that avoided the "disaster of Federal control" were not silently endorsing sweeping federal power over the State's navigable waters. Indeed, the Ninth Circuit could not cite a single statement from any report, committee, or even member of Congress to support its ratification theory. That Congress never amended the definition of "public lands" to override *Katie John I* cannot be seen as an endorsement of the opinion. Given the "inertia" created by the Constitution's "'complicated check on legislation,'" this inaction could be due to any number of factors, including an "inability to agree upon how to alter the status quo" or simply "political cowardice." *Johnson v. Transp. Agency, Santa Clara Cty.*, 480 U.S. 616, 672 (1987) (Scalia, J., dissenting). And this Court has long held that the mere appropriation of funds cannot change substantive law. *TVA v. Hill*, 437 U.S. 153, 190-91 (1978). This Court would "walk on quicksand" if it tried to find a "controlling legal principle" from these appropriation acts. *Helvering v. Hallock*, 309 U.S. 106, 121 (1940).

Nor was *Katie John I* "'settled'" or "unquestioned" such that a court "must presume Congress … endorsed it." *Jama v. ICE*, 543 U.S. 335, 349 (2005).

When Congress adopted these acts, the *Katie John* litigation was still ongoing. *Katie John I* was an interlocutory decision, and the issue would be hotly debated in *Katie John II* just a few years after Congress passed the appropriations acts. And the fact that this Court denied certiorari in *Katie John I* is not, as the Ninth Circuit believed, App.34a n.14, a reason to regard the point as settled. This Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction," and so denying certiorari does not "preclude [a party] from raising the same issues in a later petition, after final judgment has been rendered." *VMI v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari); *see* Shapiro *et al.*, *Supreme Court Practice* §4.18 (11th ed. 2019).

In the end, what some unnamed members of Congress may have been thinking here is beside the point. The Court "cannot" rely on a theory of congressional ratification when "'the text and structure of the statute are to the contrary.'" *BP PLC v. Mayor & City Council of Baltimore*, 141 S.Ct. 1532, 1541 (2021). Especially so here given ANILCA's straightforward definition of "public lands."

3. If there were any doubt, the clear-statement canon resolves it. This Court does not interpret a statute to "alter the usual constitutional balance between the States and the Federal Government" unless Congress makes "its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (cleaned up). For example, in

Sackett, the Court rejected an "overly broad interpretation of the [Clean Water Act's] reach" that would have impinged on the "core of traditional state authority" to "[r]egulat[e] … land and water use." 598 U.S. at 679-80; *see also SWANCC v. USACE*, 531 U.S. 159, 169 n.5 (2001).

Here, the regulation of fishing on navigable waters is unquestionably a core function of state sovereignty. Yet there is no "'exceedingly clear language'" in ANILCA authorizing the federal government to deprive the State of this authority. *Sackett*, 598 U.S. at 679. Indeed, as *Katie John I* recognized, ANILCA "makes no reference to navigable waters" at all. 72 F.3d at 702. This lack of exceedingly clear language confirms that the Ninth Circuit's opinion has no basis in the text.

B. The decision below conflicts with Alaska Supreme Court precedent.

The Ninth Circuit's *Katie John* rule also conflicts with Alaska's highest court's interpretation of ANILCA. In *Totemoff*, the Alaska Supreme Court considered a subsistence hunter's use of artificial lighting—a portable spotlight—to hunt deer from his perch on a small river boat on Alaska's navigable waters. The State prosecuted the hunter for violating state law prohibiting hunting with an artificial light. The hunter argued that ANILCA prevented the State from prosecuting him because he shot the deer on navigable waters, which he reasoned were the federal government's to regulate. The Alaska Supreme Court rejected that defense, holding that navigable waters

owned by the State are not "public lands" under ANILCA. 905 P.2d at 968.

The Alaska Supreme Court held that navigable waters were not "public lands" under the reserved-water-rights doctrine. In reasoning that this Court would later adopt in *Sturgeon*, the Alaska Supreme Court explained that "reserved water rights are not the type of property interests to which title can be held." *Id.* at 965; *see Sturgeon II*, 587 U.S. at 44 (quoting *Totemoff*). Interpreting the statute to include navigable waters also "would conflict with the clear statement doctrine." *Totemoff*, 905 P.2d at 966. As the court noted, "[s]tates have traditionally had the power to govern hunting and fishing in their navigable waters," and in enacting ANILCA, "Congress has not expressed in unmistakably clear language a desire to alter this traditional allocation of state and federal power." *Id.* Resolving this clear split in authority between Alaska's high court and the Ninth Circuit is yet another reason to grant certiorari.

III. This case presents an excellent vehicle to resolve the question presented.

Though this issue has been debated by the lower courts since 1995, this Court has never been presented with a clean petition to resolve it. In *Katie John I*, the Court was asked to review a decision on interlocutory review, something it has long declined to do "unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *Am. Constr. Co. v. Jacksonville T. & K.W. Ry. Co.*, 148 U.S. 372, 384 (1893); *supra* p.33. In *Katie John II*, the case became final after a heavily divided

en banc decision, but Alaska Governor Knowles flipped the State's long-held position and declined to file a petition for certiorari. App.16a. In *Katie John III*, the Ninth Circuit addressed the legality of federal regulations, not the underlying reserved water rights holding. 720 F.3d at 1245. And in *Sturgeon*, ANILCA's subsistence-fishing provisions were "not at issue in th[e] case," so the Court "d[id] not disturb the Ninth Circuit's holdings." 587 U.S. at 45 n.2. The decision below, by contrast, squarely presents the meaning of "public lands" under Title VIII of ANILCA.

That the Ninth Circuit has applied its *Katie John* rule since the 1990s is no reason to deny certiorari. This Court has "no warrant to ignore clear statutory language on the ground that other courts have done so," even if they have done so for "'30 years.'" *Milner v. Dep't of Navy*, 562 U.S. 562, 575-76 (2011); *see BP PLC*, 141 S.Ct. at 1541. The Court thus does not hesitate to grant certiorari to consider statutory questions that have been misinterpreted by the lower courts for decades. *See, e.g.*, *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436-37 (2019) (overturning the D.C. Circuit's 45-year-old interpretation of the Freedom of Information Act, which had been adopted by multiple courts of appeals and was "a relic from a 'bygone era of statutory construction'").

In the end, Respondents will no doubt argue that policy concerns warrant leaving the decision below in place. But the way to achieve policy goals is "'by legislation and not by court decision.'" *NCAA v. Alston*, 594 U.S. 69, 96 (2021). Courts "aren't free to rewrite clear

statutes under the banner of [their] own policy concerns." *Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019). If Congress wants the federal government to take over the State's navigable waters, it should say so. Until it does, courts should follow the statute as written.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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