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IN THE

# Supreme Court of the United States

ONEIDA INDIAN NATION OF NEW YORK, ONEIDA TRIBE OF INDIANS OF WISCONSIN, ONEIDA OF THE THAMES,
*Petitioners*,

*v.*

COUNTY OF ONEIDA, COUNTY OF MADISON, STATE OF NEW YORK,
*Respondents.*

**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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## QUESTIONS PRESENTED

1. Whether the court of appeals contravened this Court's decisions in *Oneida Indian Nation of New York* v. *County of Oneida*, 470 U.S. 226 (1985), and *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197 (2005), by ruling that "equitable considerations" rendered petitioners' claims for money damages for the dispossession of their tribal lands in violation of federal law void *ab initio*.

2. Whether the court of appeals impermissibly encroached on the legislative power of Congress by relying on "equitable considerations" to bar petitioners' claims as untimely, even though they were brought within the statute of limitations fixed by Congress for the precise tribal land claims at issue.

## PARTIES TO THE PROCEEDING

Petitioners Oneida Indian Nation of New York, Oneida Tribe of Indians of Wisconsin, and Oneida of the Thames were plaintiffs in the district court and appellees/cross-appellants in the court of appeals. The United States was intervenor-plaintiff in the district court and appellee/cross-appellant in the court of appeals.

Respondents were defendants in the district court and appellants/cross-appellees in the court of appeals.

## TABLE OF CONTENTS


Page

QUESTIONS PRESENTED ..... i

PARTIES TO THE PROCEEDING ..... ii

TABLE OF AUTHORITIES ..... vi

OPINIONS BELOW ..... 1

JURISDICTION ..... 2

STATUTES INVOLVED ..... 2

STATEMENT ..... 2

A. Factual Background ..... 4

B. Congressional Action On Indian Land Claims ..... 5

C. The Oneidas' Claims ..... 7

1. The "test case" ..... 7

2. This litigation ..... 9

3. This Court's *Sherrill* decision ..... 10

4. The Second Circuit's *Cayuga* decision ..... 11

D. The Decisions Below ..... 12

REASONS FOR GRANTING THE PETITION ..... 15

I. THE SECOND CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISIONS IN *ONEIDA II* AND *SHERRILL* ..... 16

A. This Court Has Ruled That Indian Tribes May Claim Damages For Wrongful Dispossession Of Their Historic Lands ..... 16

**TABLE OF CONTENTS—Continued**

Page

B. The Court Of Appeals' Dismissal Of The Oneidas' Claims Contradicts This Court's Decisions ..... 20

1. The "possessory" claims are indistinguishable from the claims approved in *Oneida II* ..... 21

2. The "non-possessory" claims are not "disruptive" under *Sherrill* ..... 23

C. This Case Is Distinct From *Cayuga* In Critical Respects ..... 25

II. THE DECISION BELOW NULLIFIES CONGRESS'S CONSIDERED JUDGMENT TO ALLOW TRIBES TO MAINTAIN CLAIMS ARISING FROM THE ILLEGAL ACQUISITION OF THEIR LAND ..... 26

CONCLUSION ..... 32

APPENDIX A: Opinion of the United States Court of Appeals for the Second Circuit (August 9, 2010) ..... 1a

APPENDIX B: Memorandum-Decision and Order of the United States District Court for the Northern District of New York (May 21, 2007) ..... 69a

APPENDIX C: Memorandum-Decision and Order of the United States District Court for the Northern District of New York (September 25, 2000) ..... 107a

**TABLE OF CONTENTS—Continued**

Page

APPENDIX D: Order of the United States Court of Appeals for the Second Circuit denying petitions for rehearing and rehearing *en banc* (December 16, 2010) ..... 183a

APPENDIX E: Order of the United States Court of Appeals for the Second Circuit granting motion to appeal an interlocutory order of the district court (July 13, 2007) ..... 185a

APPENDIX F: 25 U.S.C. § 177 ..... 187a

APPENDIX G: 28 U.S.C. § 2415 ..... 189a

APPENDIX H: Nonintercourse Act of 1793, § 8, 1 Stat. 329, 330 ..... 193a

APPENDIX I: Department of the Interior, Bureau of Indian Affairs, Statute of Limitations Claim List, 48 Fed. Reg. 13,698 (March 25, 1983) (excerpt) ..... 201a

## TABLE OF AUTHORITIES

### CASES

Page(s)

*Agency Holding Corp.* v. *Malley-Duff & Associates, Inc.*, 483 U.S. 143 (1987) ..... 27

*Cayuga Indian Nation of New York* v. *Pataki*, 413 F.3d 266 (2d Cir. 2005) ..... 11, 12, 21, 24, 26

*Cayuga Indian Nation of New York* v. *Pataki*, 547 U.S. 1128 (2006) (mem.) ..... 12

*City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197 (2005) ..... *passim*

*Deere* v. *St. Lawrence River Power Co.*, 32 F.2d 550 (2d Cir. 1929) ..... 12

*FPC* v. *Tuscarora Indian Nation*, 362 U.S. 99 (1960) ..... 4

*Felix* v. *Patrick*, 145 U.S. 317 (1892) ..... 19

*Holmberg* v. *Armbrecht*, 327 U.S. 392 (1946) ..... 30

*Johnson* v. *Long Island Railroad Co.*, 56 N.E. 992 (N.Y. 1900) ..... 12

*Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975) ..... 31

*Lonchar* v. *Thomas*, 517 U.S. 314 (1996) ..... 31

*Lyons Partnership* v. *Morris Costumes, Inc.*, 243 F.3d 789 (4th Cir. 2001) ..... 28

*Miller* v. *Maxwell's International Inc.*, 991 F.2d 583 (9th Cir. 1993) ..... 28

*Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618 (1978) ..... 31

*Morgan* v. *Koch*, 419 F.2d 993 (7th Cir. 1969) ..... 28

**TABLE OF AUTHORITIES—Continued**

Page(s)

*Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197 (1988) ..... 31

*Oneida Indian Nation of New York* v. *County of Oneida*, 414 U.S. 661 (1974) ..... 7

*Oneida Indian Nation of New York State* v. *Oneida County, N. Y.*, 464 F.2d 916 (2d Cir. 1972) ..... 4

*Oneida Indian Nation of New York* v. *County of Oneida*, 217 F. Supp. 2d 292 (N.D.N.Y. 2002) ..... 8

*Oneida Indian Nation of New York* v. *County of Oneida*, 470 U.S. 226 (1985) ..... *passim*

*Oneida Indian Nation of New York State* v. *Oneida County*, 719 F.2d 525 (2d Cir. 1983) ..... 5

*People ex rel. Cayuga Nation of Indians* v. *Commissioners of Land Office*, 100 N.E. 735 (N.Y. 1912) ..... 25

*Rodriguez de Quijas* v. *Shearson/American Express*, 490 U.S. 477 (1989) ..... 20

*Seneca Nation of Indians* v. *Appleby*, 89 N.E. 835 (N.Y. 1909) ..... 12

*Shoshone Tribe of Indians* v. *United States*, 299 U.S. 476 (1937) ..... 24

*United States* v. *Mack*, 295 U.S. 480 (1935) ..... 27

*United States* v. *Minnesota*, 270 U.S. 181 (1926) ..... 24

*United States* v. *Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001) ..... 27, 28, 31

## TABLE OF AUTHORITIES—Continued

Page(s)

*United States* v. *Pataki*, 547 U.S. 1128 (2006) (mem.) ..... 12

*United States* v. *Rodriguez-Aguirre*, 264 F.3d 1195 (10th Cir. 2001) ..... 27

*Yankton Sioux Tribe of Indians* v. *United States*, 272 U.S. 351 (1926) ..... 18

### STATUTES

Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701 *et seq.* ..... 30

Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721 *et seq.* ..... 30

Mohegan Nation (Connecticut) Land Claims Settlement Act, 25 U.S.C. §§ 1775 *et seq.* ..... 30

28 U.S.C. § 1254 ..... 2

Pub. L. No. 89-505, 80 Stat 304 (1966) (codified as amended 28 U.S.C. § 2415) ..... 5

Pub. L. No. 92-485, 86 Stat. 803 (1972) ..... 5

Pub. L. No. 95-103, 91 Stat. 842 (1977) ..... 6

Pub. L. No. 96-217, 94 Stat. 126 (1980) ..... 6

Pub. L. No. 97-394, 96 Stat. 1966 (1982) ..... 6

### LEGISLATIVE MATERIALS

H.R. Rep. No. 96-807 (1980) ..... 6

S. Rep. No. 92-1253 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3592 ..... 5

S. Rep. No. 95-236 (1977) ..... 6, 29

**TABLE OF AUTHORITIES—Continued**

Page(s)

S. Rep. No. 96-569 (1980) ..... 6, 29

*The Extension for Commencing Actions on Behalf of Indians: Hearing on S. 3377 and H.R. 13825 Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs*, 92d Cong. (1972) ..... 6

*Statute of Limitations Extension for Indian Claims: Hearing on S. 1377 Before the Senate Select Committee on Indian Affairs*, 95th Cong. (1977) ..... 6

123 Cong. Rec. 22,165 (1977) (statement of Rep. Cohen) ..... 30

123 Cong. Rec. 22,169 (1977) (statement of Rep. Moorhead) ..... 29

123 Cong. Rec. 22,170 (1977) (statement of Rep. Hanley) ..... 30

123 Cong. Rec. 22,502 (1977) (statement of Rep. Foley) ..... 30

**TREATIES**

Treaty of Canandaigua, 7 Stat. 44 (1794) ..... 4

**OTHER AUTHORITIES**

Appellants' Br., *Cayuga Indian Nation of New York* v. *Pataki*, 413 F.3d 266 (2d Cir. 2005), *available at* 2003 WL 24300625 ..... 24

**TABLE OF AUTHORITIES—Continued**

Page(s)

Appellees' Br., *Cayuga Indian Nation of New York* v. *Pataki*, 413 F.3d 266 (2d Cir. 2005), *available at* 2003 WL 24300617 ..... 25

Order (Dkt. No. 121), *Oneida Indian Nation of New York* v. *County of Oneida*, No. 5:70-cv-35 LEK (N.D.N.Y. filed Mar. 9, 2004) ..... 9

Resp. Br., *Oneida Indian Nation of New York* v. *County of Oneida*, U.S. No. 83-1240, *available at* 1983 WL 486448 ..... 17

Transcript of Oral Argument, *City of Sherrill* v. *Oneida Indian Nation*, U.S. No. 03-855, *available at* 2005 WL 148904 ..... 9

U.S. Br., *Oneida Indian Nation of New York* v. *County of Oneida*, U.S. No. 83-1240, *available at* 1984 WL 566161 ..... 17

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COUNTY OF ONEIDA, COUNTY OF MADISON, STATE OF NEW YORK,
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**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

## PETITION FOR A WRIT OF CERTIORARI

Petitioners Oneida Indian Nation of New York, Oneida Tribe of Indians of Wisconsin, and Oneida of the Thames (together, the Oneidas) respectfully petition for a writ of certiorari to review the judgment of the court of appeals in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App. 1a-68a) is reported at 617 F.3d 114. The principal opinion of the district court (App. 69a-105a) is reported at 500 F. Supp. 2d 128. An earlier opinion of the district court (107a-181a) is reported at 199 F.R.D. 61.

## JURISDICTION

The judgment of the court of appeals was entered on August 9, 2010. App. 52a-53a. Petitions for rehearing were denied on December 16, 2010. App. 183a. On March 4, 2011, Justice Ginsburg extended the time for filing a petition for a writ of certiorari to and including April 15, 2011, and on April 6, 2011, further extended the time for filing to and including May 16, 2011. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

The following statutory provisions are reproduced in the appendix to this Petition: the Nonintercourse Act of 1793, § 8, 1 Stat. 329, 330 (App. 194a-195a); the Nonintercourse Act as amended, 25 U.S.C. § 177 (App. 187a); and the Indian Claims Limitation Act, 28 U.S.C. § 2415 (App. 189a-192a).

## STATEMENT

The decision below purports to extinguish on "equitable" grounds Indian land claims that are indistinguishable from those that this Court affirmed as a valid basis for liability in *Oneida Indian Nation of New York* v. *County of Oneida*, 470 U.S. 226 (1985) (*Oneida II*). The decision is in serious conflict with controlling decisions of this Court and the policy judgment of Congress embodied in the Indian Claims Limitation Act (ICLA).

In *Oneida II*, this Court held that the Oneidas—petitioners here—could maintain an action for money damages to remedy the dispossession of their aboriginal lands in violation of the Nonintercourse Act. *Oneida II* permitted Indian land claims like the Oneidas' to proceed on their merits in federal court despite the fact, just as obvious then as now, that they in-

volve "claims dating back more than a century and a half," 470 U.S. at 253. *Oneida II* emphasized that Congress had balanced the societal interests at stake and had determined, in ICLA, to allow such claims to proceed so long as they fell within a prescribed statutory limitations period. In *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197, 221 (2005), the Court expressly declined to disturb that holding and reiterated that, under *Oneida II*, "the Oneidas could maintain a federal common-law claim for damages for ancient wrongdoing," *id.* at 202.

The court of appeals, in sharp contrast, required the outright dismissal of the Oneidas' claims, creating square conflicts with *Oneida II* and *Sherrill*, as well as the statutory balance struck by ICLA. Both conflicts warrant this Court's review. This Court's decisions—and the legislative judgments that they honor—dictated that the Oneidas could maintain their claims. The Second Circuit's decision would have required dismissal of the very complaint filed in *Oneida II*, upon which this Court affirmed a finding of liability.

Further, the Second Circuit's decision improperly replaces the congressional policy embodied in ICLA with the panel majority's own conception of the fairness of allowing tribes to recover for the dispossession of their historic lands. Nothing in *Sherrill*, which merely imposed equitable limitations on *remedies* available to tribes seeking to recover rights to their historic lands, permits either result. Because the decision below fails to respect both the controlling force of this Court's decisions and the considered judgment of Congress, certiorari is warranted.

### A. Factual Background

The Oneidas originally possessed and occupied about six million acres in central New York. Even after the State of New York obtained most of the Oneidas' territory in 1788, the Oneidas retained a reservation of about 300,000 acres. *Oneida II*, 470 U.S. at 231. In 1794, the federal Treaty of Canandaigua (7 Stat. 44) recognized the Oneidas' right to possession of that reservation. 470 U.S. at 231 & n.1.

"With the adoption of the Constitution, Indian relations became the exclusive province of federal law." *Oneida II*, 470 U.S. at 234. In 1790, Congress passed the Indian Trade and Intercourse Act (the Nonintercourse Act), which "prohibited the conveyance of Indian land except where such conveyances were entered pursuant to the treaty power of the United States." *Id.* at 231-232. By requiring federal approval of all conveyances of Indian land, Congress intended "to prevent unfair, improvident or improper disposition" of tribal lands. *FPC* v. *Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960). President Washington pledged that the law would be "'security for the remainder of your lands.... The General Government will never consent to your being defrauded, but it will protect you in all your just rights.'" *Oneida Indian Nation of N.Y. State* v. *Oneida County, N.Y.*, 464 F.2d 916, 918-919 (2d Cir. 1972) (quoting President Washington's address to the Six Nations). Congress strengthened the Nonintercourse Act in 1793 by providing that "no purchase" made in violation of the Act "shall be of any validity in law or equity" and subjecting violators to criminal penalties (App. 193a); with limited amendment, it remains in force to this day (App. 187a).

Notwithstanding the Nonintercourse Act and the Treaty of Canandaigua—and despite repeated warnings from the federal government—New York began acquiring land from the Oneidas without the required federal approval. In the first of a series of unlawful purchases beginning in 1795, New York paid about $0.50 per acre for land that was promptly resold to non-Indian settlers for roughly $3.53 per acre. *Oneida Indian Nation of N.Y. State* v. *Oneida County*, 719 F.2d 525, 529 (2d Cir. 1983). By 1846, New York had unlawfully acquired the vast majority of the Oneidas' 300,000-acre reservation.

### B. Congressional Action On Indian Land Claims

In 1966, Congress for the first time enacted a general statute of limitations for suits by the United Sates, including a six-year limitations period for claims brought to fulfill its trust obligation to Indian tribes. Pub. L. No. 89-505, 80 Stat. 304 (1966) (codified as amended 28 U.S.C. § 2415). Prior claims, not previously subject to any limitations period, accrued by operation of law on the date of enactment, July 18, 1966. *See id.* (enacting § 2415(g)).

As the magnitude of potential Indian land claims became apparent, the Department of the Interior urged Congress to extend the limitations period on the ground that a failure to allow potential claims to proceed in court would "result in a considerable loss to Indians through no fault of their own, losses which Indians can ill afford." S. Rep. No. 92-1253, at 4 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3592, 3595. Congress responded in 1972 by extending the statute of limitations for claims brought on behalf of Indian tribes an additional five years. Pub. L. No. 92-485, 86 Stat. 803 (1972). In light of the backlog of potential claims, Con-

gress provided additional extensions of the limitations period in 1977 and 1980. Pub. L. Nos. 95-103, 91 Stat. 842 (1977) & 96-217, 94 Stat. 126 (1980).

When considering each of these extensions, Congress was well aware that some of the claims at issue stemmed from centuries-old wrongdoing. *See, e.g., The Extension for Commencing Actions on Behalf of Indians: Hearing on S. 3377 and H.R. 13825 Before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 92d Cong. 23 (1972) (testimony of William A. Gershunty) ("[I]n fairness to a third party we simply have to litigate questions of title going back 100 years, 150 years, 200 years in some cases[.]"); S. Rep. No. 95-236, at 2 (1977) ("Many of these claims go back to the 18th and 19th centuries[.]"). Indeed, specific reference was made to the claims of the Oneidas. *See Statute of Limitations Extension for Indian Claims: Hearing on S. 1377 Before the S. Select Comm. on Indian Affairs*, 95th Cong. 24, 33 (1977). Congress was also cognizant of the fact that Indian claims involved significant tracts of land that had passed into private ownership. *See, e.g.*, H.R. Rep. No. 96-807, at 4 (1980) (testimony of private landowners); S. Rep. No. 96-569, at 9 (1980) (letter of Assistant Secretary of Indian Affairs Forrest Gerard to Senate Committee on Indian Affairs) ("This committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdiction where they may be litigated.").

In 1982, Congress enacted the Indian Claims Limitation Act (ICLA), which established a mechanism for the final resolution of Indian land claims. Pub. L. No. 97-394, 96 Stat. 1966 (1982). ICLA directed the Secretary of the Interior to publish two lists identifying all pre-1966 Indian claims that remained unaddressed. As

this Court explained the import of the resulting scheme, any claim that was listed but was neither acted upon nor formally rejected by the Secretary remained live. *Oneida II*, 470 U.S. at 243. The Secretary included the Oneida claim on the first list prepared in accordance with the Act. App. 201a.

### C. The Oneidas' Claims

#### 1. The "test case"

In 1970, the Oneidas filed a "test case" to recover the fair rental value of illegally acquired land then held by Madison and Oneida Counties for the period January 1, 1968, through December 31, 1969—and to establish the principle that violations of tribal possessory rights are compensable under federal law. *Oneida Indian Nation of N.Y.* v. *County of Oneida*, 414 U.S. 661, 664 (1974) (*Oneida I*). The land at issue fell within the boundaries of the State's first (and largest) purchase of Oneida land, which occurred in 1795. The Oneidas alleged that the 1795 purchase (of approximately 100,000 acres) violated the Nonintercourse Act and was therefore void. This Court ruled that the Oneidas had properly pleaded a claim arising under federal law. *See id.*

On remand, the district court ruled that the 1795 transaction violated the Nonintercourse Act and that the Counties were liable to the Oneidas for the fair rental value of the land from 1968 to 1969, and it awarded damages to the Oneidas. The Second Circuit affirmed the Counties' liability for wrongful possession of the land. "Recognizing the importance of the Court of Appeals' decision not only for the Oneidas, but potentially for many eastern Indian land claims," this Court then granted certiorari to determine "whether an Indian tribe may have a live cause of action for a vio-

lation of its possessory rights that occurred 175 years ago." *Oneida II*, 470 U.S. at 230. This Court affirmed, concluding that such claims are valid—and that the Counties were properly held liable. *Id.* at 253 ("The judgment of the Court of Appeals is affirmed with respect to the finding of liability under federal common law.").

The Court in *Oneida II* rejected arguments that the suit was barred under various legal and equitable theories. In particular, the Court reasoned that ICLA "presumes the existence of an Indian right of action not otherwise subject to any statute of limitations," and that imposing one would be "a violation of Congress' will." *Oneida II*, 470 U.S. at 244. Although it was unnecessary to decide whether laches might preclude recovery because the defense had been abandoned on appeal, the Court (in response to the dissent) noted that application of the equitable defense of laches in an action at law "would be novel indeed" and that "it is questionable whether laches properly could be applied." *Id.* at 244 n.16. While it found the claims "firmly established" as a matter of federal law, *id.* at 233, and affirmed the Counties' liability on those claims, it recognized that equitable considerations might limit "the *relief* available" on remand, *id.* at 253 n.27 (emphasis added). The dissenting justices would have applied laches to bar the claims altogether. *Id.* at 255 (Stevens, J., dissenting).

On remand, the district court awarded damages in the amount of $18,970 from Madison County and $15,994 from Oneida County, with interest and adjustments for the value of the Counties' good-faith improvements to the land. *Oneida Indian Nation of N.Y.* v. *County of Oneida*, 217 F. Supp. 2d 292, 310 (N.D.N.Y. 2002). The Counties ultimately paid ap-

proximately $57,000 in satisfaction of the judgment. Order (Dkt. No. 121), No. 5:70-cv-35 LEK (N.D.N.Y. filed Mar. 9, 2004).

### 2. This litigation

Shortly after this Court's decision in *Oneida I*, the Oneidas filed the present case against the Counties to seek redress for the unlawful dispossession of roughly 250,000 acres of their reservation, beginning with the State's 1795 purchase. The litigation was held in abeyance while the "test case" proceeded. In 1998, the United States intervened on behalf of the Oneidas, and New York was added as a defendant. The Oneidas and the United States filed amended complaints, alleging violations of the Nonintercourse Act and federal common law.

As pertinent here, the Oneidas sought money damages on two alternative theories.[1] First, the Oneidas requested trespass damages of the type awarded in the test case and affirmed in *Oneida II*. That claim was based on the allegation that the Oneidas had been unlawfully dispossessed of their land in violation of the

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[1] The district court ruled that ejectment of private landowners was barred by the "impossibility" doctrine. App. 176a-177a. The Oneidas and the United States did not appeal that ruling and filed amended complaints seeking relief against only the State and Counties, with no assertion of any right of ejectment. C.A.J.A. A205-A234, A433-A451. Counsel for the Oneida Indian Nation of New York confirmed the point to this Court at oral argument in *Sherrill*, stating: "I will state it clearly here today that the Oneidas do not assert a right to evict landowners in the land claim area," and "We are not asserting a right to evict." Transcript of Oral Argument, U.S. No. 03-855, *available at* 2005 WL 148904, at *28-*29.

Nonintercourse Act's requirement of federal approval, and sought "damages, from the time each portion of the subject lands was wrongfully acquired or transferred from the Oneida Indian Nation by the State to the present, and interest thereon." C.A.J.A. A229 (Oneida Am. Compl. 25). The courts below referred to these as "possessory" claims because they presupposed a right of possession that survived the challenged transactions.

Second, the Oneidas sought compensation for the difference in value "between the price at which New York State acquired or transferred each portion of the subject lands from the Oneida Indian Nation and its value ... with interest." C.A.J.A. A230 (Oneida Am. Compl. 26). The courts below referred to these as "non-possessory" claims because they did not depend upon any ongoing possessory interest as a basis for recovery. Rather, these claims alleged that, entirely independent of any possessory interest, the State's acquisitions of those lands without federal approval violated the Nonintercourse Act and were on unfair terms to the Oneidas—exactly the type of harm to the Tribe that the Nonintercourse Act was intended to prevent. The Oneidas requested damages to redress the unfair prices paid for their lands.

### 3. This Court's *Sherrill* decision

While this case was pending in the district court, a separate dispute arose when the Oneida Indian Nation of New York purchased certain parcels within the Oneida reservation on the open market and sought judicial recognition of tribal sovereignty over those lands, as well as a permanent injunction against current or future taxation. The controversy ultimately reached this Court in *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197 (2005).

In *Sherrill*, the Court emphasized both the extraordinary nature of the relief requested—a judicial restoration of tribal sovereignty over land long subject to State and local control—and the practical consequences that would follow from awarding such relief. 544 U.S. at 219. Specifically, it concluded that "[a] checkerboard of alternating state and tribal jurisdiction in New York State—created unilaterally at [the tribe's] behest—would seriously burde[n] the administration of state and local governments and would adversely affect landowners neighboring the tribal patches." *Id.* at 219-220 (alteration in original; internal quotation marks omitted). Accordingly, the Court held that equitable considerations grounded in the doctrines of laches, acquiescence, and impossibility "preclude[d] the Tribe from rekindling embers of sovereignty that long ago grew cold." *Id.* at 214; *see also id.* at 221. The Court emphasized, however, 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*." *Id.*

### 4. The Second Circuit's *Cayuga* decision

Despite *Sherrill*'s explicit admonition that this Court's affirmance of liability for money damages in *Oneida II* remains intact, the Second Circuit construed *Sherrill* to preclude precisely the type of damages claim upheld in *Oneida II* on the basis of laches. In *Cayuga Indian Nation of New York* v. *Pataki*, 413 F.3d 266 (2d Cir. 2005), the Cayugas sought trespass damages with regard to land acquired from the tribe in violation of the Nonintercourse Act (as well as ejectment of the current landowners). The court concluded that "the import of *Sherrill* is that 'disruptive,' forward looking claims, a category exemplified by possessory

land claims, are subject to equitable defenses, including laches." *Id.* at 277. The court then concluded that any claim for trespass damages fell within that rule because such a claim presupposed some continuing right of possession. Relying on a finding of laches by the district court, the Second Circuit ruled that the Cayugas' trespass claim for money damages was thus barred under *Sherrill*. *Id.* at 277-278. This Court denied the Cayugas' and the United States' petitions for certiorari. 547 U.S. 1128 (2006).

### D. The Decisions Below

Respondents moved for summary judgment on the Oneidas' claims in this case—"possessory" and "non-possessory" alike—on the basis of *Sherrill* and *Cayuga*. The district court granted the motion in part and denied it in part. App. 104a. Although the court found that "the Oneidas have diligently pursued their claims in various fora,"[2] and rejected "any supposed deficiency in the Oneidas' efforts to vindicate their claims," it concluded that the Oneidas were nonetheless barred, under *Cayuga*, from pursuing "possessory" claims. App. 81a-84a. The court denied summary judgment, however, on the Oneidas' "non-possessory" claims against the State for the difference between the value of the land and the price paid for it by the State. The court

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[2] The Oneidas repeatedly sought to obtain relief from New York for the dispossession of their lands. For decades, however, no judicial forum, state or federal, was open to them. *See Seneca Nation of Indians* v. *Appleby*, 89 N.E. 835, 836 (N.Y. 1909); *Johnson* v. *Long Island R.R. Co.*, 56 N.E. 992, 993 (N.Y. 1900); *Deere* v. *St. Lawrence River Power Co.*, 32 F.2d 550 (2d Cir. 1929). The Oneidas' victory in *Oneida I* established federal-court jurisdiction over such claims.

concluded that this "claim is best styled as a contract claim that seeks to reform or revise a contract that is void for unconscionability. This type of contract claim is not disruptive." App. 89a.

A divided panel of the court of appeals extended *Cayuga* to hold that *all* of the Oneidas' claims were subject to dismissal as a matter of law. As to the possessory claims, the Oneidas and the United States argued that the claims could proceed notwithstanding *Cayuga* because respondents had not established the elements of laches—the asserted basis of the decision. The Second Circuit concluded, however, that "[w]e have used the term 'laches' ... as a convenient shorthand for equitable principles" that "do[] not focus on the elements of traditional laches, but rather more generally on the length of time at issue between an historical injustice and the present day, on the disruptive nature of claims long delayed, and on the degree to which those claims upset justifiable expectations[.]" App. 25a-26a. The court of appeals therefore deemed immaterial that the district court had found no deficiency in the Oneidas' diligent pursuit of their claim or prejudice to respondents resulting from any delay in bringing suit. *Id.*; *see also* App. 83a.

As to the non-possessory claims, which the district court had allowed to proceed, the court of appeals first held that the United States had failed to plead an identical common-law claim against the State, and that the Oneidas could not proceed with such a claim alone because such a claim by the federal government was necessary to overcome the State's sovereign immunity.[3]

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[3] The court of appeals construed the United States' complaint to assert "predominantly, if not exclusively, trespass and eject-

App. 33a-41a. The court also rejected the United States' argument that its complaint, if insufficient, should be deemed constructively amended to state a non-possessory claim. App. 39a-41a.

The court of appeals further concluded that equitable considerations barred the Oneidas from proceeding with a non-possessory damages claim under the Nonintercourse Act. The court determined that "the equitable defense originally recognized in *Sherrill* is potentially applicable to all ancient land claims that are disruptive of justified societal interests that have developed over a long period of time, of which possessory claims are merely one type, and regardless of the remedy sought." App. 44a. The court then held that even a suit seeking only monetary compensation to redress inadequate consideration for Indian lands "necessarily calls into question the validity of the original transfer of the subject lands and at least potentially, by extension, subsequent ownership of those lands by non-Indian parties." App. 45a. Such legal claims were barred by equity because "the applicability of an equitable defense requires consideration of the basic premise of a

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ment-based claims" and ruled that the United States had failed adequately to plead facts to support a common-law non-possessory claim. App. 36a-37a. It so ruled even though the United States alleged that "each of the [purchase] agreements was illegal and void *ab initio*" (C.A.J.A. A443) and that New York "made substantial profits on its purported sales" of the lands (C.A.J.A. A444)—and sought "appropriate monetary relief" and "such other relief as this Court may deem just and proper" under both federal common law and the Nonintercourse Act (C.A.J.A. A447). The court did not suggest that any of the deficiencies it identified as dispositive on appeal could not have been cured by amendment or that such amendment would have prejudiced the defendants.

claim, rather than the particular remedy sought." App. 48a.

Judge Gershon dissented in part and would have affirmed the district court's ruling in its entirety. She lamented: "With this decision, the majority forecloses plaintiffs from bringing *any* claims seeking *any* remedy for their treatment at the hands of the State. This is not required by *Sherrill* or *Cayuga*, and is contrary to the spirit of the Supreme Court's decision in this very case." App. 67a (Gershon, J., dissenting in part). Although she concluded that the Oneidas' possessory claims for trespass damages were controlled by *Cayuga*, in her view that case did not govern claims for the difference between the value of land and the amounts paid. App. 54a. "Nothing in *Cayuga* or *Sherrill* prohibits the purely backward-looking, non-possessory claims asserted here[.]" App. 67a.[4]

## REASONS FOR GRANTING THE PETITION

The Second Circuit's decision—that the Oneidas may pursue *no* claim for money damages based on violations of the Nonintercourse Act—is directly contrary to this Court's decision in *Oneida II*, which upheld the Counties' liability on just such a claim. The court of appeals relied on *Sherrill* to conclude that such a claim would be impermissibly "disruptive," but it misread that decision; *Sherrill* expressly did not disturb the holding in *Oneida II* and focused on the extraordinary

[4] Judge Gershon also concluded that the United States had adequately pled a common-law claim for reformation of contract, and that, if it had not, its complaint should be deemed constructively amended to state such a claim. App. 56a-58a.

*remedies* at issue there, while expressly distinguishing the underlying rights at stake.

The Second Circuit's decision is also irreconcilable with Congress's considered judgment in ICLA that even very old Indian land claims, including the Oneidas', should be heard on the merits in federal court. The court discarded a statute of limitations fixed by Congress in favor of its own determination of when the Oneidas might fairly bring their claims. This Court's review is needed to enforce the federal courts' obligation to follow controlling decisions of this Court as well as duly enacted laws of Congress.

## I. THE SECOND CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISIONS IN *ONEIDA II* AND *SHERRILL*

### A. This Court Has Ruled That Indian Tribes May Claim Damages For Wrongful Dispossession Of Their Historic Lands

This Court has established that Indian tribes have a federal common-law right to damages resulting from the dispossession of their historic lands in violation of federal law. *See Oneida II*, 470 U.S. at 230; *Sherrill*, 544 U.S. at 221. In reaching that conclusion, the Court fully recognized that the facts giving rise to such claims might have occurred centuries ago, but stressed nonetheless that passage of time did not bar such claims:

> One would have thought that claims dating back for more than a century and a half would have been barred long ago. As our opinion indicates, however, neither petitioners nor we have found any applicable statute of limitations or other relevant legal basis for holding that the Oneidas' claims are barred or otherwise have been satisfied.

*Oneida II*, 470 U.S. at 253. The Court thus affirmed the Counties' liability for wrongful possession of Oneida lands during the two-year damages period (1968-1969) in the *Oneida II* test case.

The Court made clear that no defenses presented by the Counties (including state and federal statutes of limitation and the doctrines of abatement, ratification, and nonjusticiability) barred the claim. 470 U.S. at 240-250. Although it was not called upon to rule definitively on the availability of laches (because the Counties had abandoned the defense on appeal), the Court nonetheless observed that "the application of laches would appear to be inconsistent with established federal policy" and run afoul of this Court's Indian jurisprudence. *Id.* at 244-245 n.16.

The potentially far-reaching consequences of the Court's liability holding were obvious at the time. *See* 470 U.S. at 253 ("The Government recognized, as we do, the potential consequences of affirmance."). Those consequences, however, were leavened by the possibility that "the relief available" on the claims might be limited, as the Court left open "whether other considerations may be relevant to the final disposition of this case." 470 U.S. at 253 n.27.[5] In preserving the possibility that *the relief available* on the Oneidas' meritorious

[5] The Oneidas and the United States each acknowledged that equity could play a role in shaping the *relief* available on the claim. As the Oneidas explained, courts in Indian land claims cases "have uniformly determined that any relief awarded will be informed by equity considerations" and that "[e]ffective judicial and political restraints on these cases exist" to prevent crippling exposure or disruption to the defendants and third parties. No. 83-1240, Resp. Br. 7, *available at* 1983 WL 486448; *see also* No. 83-1240, U.S. Br. 28-40, *available at* 1984 WL 566161.

claims might be limited, the Court adhered to the fundamental distinction between the existence of a legal right and the proper remedy for its violation.

That distinction was central to the Court's subsequent decision in *Sherrill*. *See* 544 U.S. at 213.[6] *Sherrill* emphasized the dispositive differences in the relief requested in the two cases: an award of "money damages only" to remedy past wrongs in *Oneida II*, versus the restoration of tribal sovereignty and a permanent injunction against current and future property taxation in *Sherrill*. *Id.* at 211-213. Whereas *Oneida II* recognized "a live cause of action for a violation of possessory rights that occurred over 175 years ago," 470 U.S. at 230, *Sherrill* "decline[d] to project redress ... into the present and future" by awarding the declaratory and injunctive relief requested by the tribe, 544 U.S. at 202.

*Sherrill* and *Oneida II* are consistent with the Court's prior decisions authorizing monetary relief on land claims where the claims themselves were meritorious but equitable considerations precluded disturbing the rights of current landowners. *See Yankton Sioux Tribe of Indians* v. *United States*, 272 U.S. 351, 357-359 (1926) (awarding just compensation to tribe where in-

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[6] *See also, e.g.*, 544 U.S. at 208 (in *Oneida II*, "the Oneidas confined their demand for relief" to damages); *id.* at 211-212 ("In contrast to *Oneida I* and *II*, which involved demands for monetary compensation, [the tribe] sought equitable relief prohibiting, currently and in the future, the imposition of property taxes."); *id.* at 213 ("When the Oneidas came before this Court 20 years ago in *Oneida II*, they sought money damages only."); *id.* at 221 ("In sum, 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*.").

tervening development made restoring possession "impossible," but denying relief altogether would "sanction a great injustice" and be "utterly indefensible upon any moral ground"); *Felix* v. *Patrick*, 145 U.S. 317, 334-335 (1892) ("[J]ustice requires only what the law ... would demand,—a repayment of the value of the scrip, with legal interest thereon," where the consequences of voiding the challenged acquisition would be "disastrous."). *Sherrill* concluded that, given the significant interests that had developed in reliance on the jurisdictional status of the lands in question, it would be inequitable to subject those lands to tribal sovereignty today. It cast no shadow on the power of federal courts, recognized in *Oneida I* and *Oneida II*, to award damages for past wrongs done to the Oneidas relating to those lands.

The Second Circuit misread *Sherrill* "fundamentally to have changed the background legal standards for assessing ancient tribal land claims." App. 16a. *Sherrill* was not nearly so broad. This Court made clear that its concern was the particular relief at issue, not the underlying proposition that the State's purchase of the Oneidas' lands violated the Act or that the Oneidas could recover damages for such violation. Indeed, the Court expressly preserved its ruling that the Oneidas could receive money damages for violations of the Nonintercourse Act. *See* 544 U.S. at 221 ("In sum, 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*.").

Nothing in *Sherrill* authorizes a court to bar a meritorious claim *ab initio*—much less a claim seeking only damages—based on "equitable considerations." Yet the Second Circuit found that *Sherrill* "is properly applied to bar *any* ancient land claims that are disrup-

tive of significant and justified *societal expectations* that have arisen as a result of lapse of time during which the plaintiffs did not seek relief." App. 42a (emphasis added). By ruling that the Oneidas may pursue no claim at all, the Second Circuit has obliterated *Sherrill*'s critical distinction between the viability of a legal claim and the availability of particular remedies. It also has opened the door for courts to invoke unconstrained considerations of equity—or "societal expectations"—to bar otherwise valid legal claims. That is a perilous state of affairs that this Court should exercise its power to correct.

### B. The Court Of Appeals' Dismissal Of The Oneidas' Claims Contradicts This Court's Decisions

The court of appeals concluded that the adjudication of any claim that implied the invalidity of the State's purchase of land from the Oneidas was impermissibly disruptive. That holding cannot be reconciled with *Oneida II*, which affirmed a judgment based on a determination that the 1795 purchase of 100,000 acres was invalid, or with *Sherrill*, which expressly did not disturb *Oneida II* while distinguishing between cognizable legal *claims* and impermissibly disruptive *remedies*. By requiring dismissal of claims that this Court has previously held to be valid, the court of appeals has encroached on this Court's prerogative to determine the controlling force of its own precedents. *See Rodriguez de Quijas* v. *Shearson/Am. Exp.*, 490 U.S. 477, 484 (1989).

### 1. The "possessory" claims are indistinguishable from the claims approved in *Oneida II*

There is no principled distinction between the claim for trespass damages that this Court upheld in *Oneida II* and the Oneidas' request for trespass damages here. Both rest on the premise that the Oneidas would have remained in possession of their historic lands, but for New York's unlawful acquisition of those lands. The earlier claim sought the fair rental value of 872 acres over a two-year damages period to establish the principle that violations of tribal possessory rights are compensable under federal law. This Court affirmed the Counties' liability for wrongful possession during that period. 470 U.S. at 253.

The "possessory" claim at issue here covers about 250,000 acres and seeks "damages, from the time each portion of the subject lands was wrongfully acquired or transferred from the Oneida Indian Nation by the State to the present time, and interest thereon[.]" C.A.J.A. A229. The claims thus differ in scale, but the Second Circuit did not purport to distinguish them even on that basis. Rather, it relied on its prior decision in *Cayuga*, which concluded that any claim (whether for monetary or equitable relief) predicated on the allegation that acquisition of land had unlawfully disturbed a tribe's right of possession was "subject to dismissal *ab initio*" because the claim itself was impermissibly "disruptive." 413 F.3d at 277-278; App. 20a-23a. The court reasoned that any claims even theoretically premised on a tribe's right of possession "are by their nature disruptive, in that they call into question settled land titles" (App. 4a) even if the claim does not challenge any landowner's possession of or title to any property.

The court of appeals' reasoning cannot be squared with the logic or language of this Court's prior decisions. Whatever inherent disruption the Second Circuit discerned in the Oneidas' request for trespass damages was equally present in *Oneida II*, where the district court found that the 1795 conveyance of a third of the Oneida reservation violated the Nonintercourse Act. *See Oneida II*, 470 U.S. at 233; *see also id.* at 273 (Stevens, J., dissenting in part) (arguing that the Court's decision "upsets long-settled expectations in the ownership of real property" and that "ancient claims are best left in repose"). Nonetheless, this Court expressly held that the Oneidas could maintain a cause of action premised on a right of possession that survived New York's acquisition of the land 175 years earlier. *Id.* at 236 ("We hold that the Oneidas can maintain this action for violation of *their possessory rights* based on federal common law." (emphasis added)). Any disruption to current landowners' certainty of title would surely have been felt long ago, given that this Court issued its *Oneida II* decision in 1985 and this case was already long-pending at that time. Yet the panel pointed to no evidence of disruption since this Court's decision—and the record contains none.

The Second Circuit failed to adhere to *Sherrill*'s distinction between rights and remedies. *See* 544 U.S. at 213. Contrary to the Second Circuit's view, *Sherrill* analyzed when the disruptiveness of a *remedy* renders it intolerable under settled principles of equity. And the remedy at issue in *Sherrill* was highly unusual: a judicial restoration of tribal sovereignty over select parcels of land that had long been subject to state and local governance. *Sherrill* addressed the "disruptive practical consequences" that would result from such a remedy, with particular emphasis on the impracticality

of a "piecemeal shift in governance" and a "checkerboard of alternating state and tribal jurisdictions." *Id.* at 219, 221.

An award of money damages bears no relation to that scenario. As the Counties' payment of damages on remand in *Oneida II* demonstrates (*see* p. 8, *supra*), a money judgment may be satisfied without any of the disruption attendant in *Sherrill*. Indeed, this Court's cases establish that monetary relief is proper precisely *because* practical considerations make restoration of possession inequitable. *See* pp. 18-19, *supra*. By relying on "disruption" to foreclose even the possibility of money damages, the Second Circuit's decision conflicts with *Oneida II* and *Sherrill*, and is not faithful to the principles on which those decisions are based.

### 2. The "non-possessory" claims are not "disruptive" under *Sherrill*

The Second Circuit's rejection of the Oneidas' "non-possessory" claim for recovery is inconsistent with this Court's application of equitable considerations in *Sherrill*. That claim is entirely retrospective in both origin and effect. The measure of damages is: "the difference in value between the price at which New York State acquired or transferred each portion of the subject lands" and the lands' actual value at the time, plus interest. C.A.J.A. A230 (prayer for relief). The rationale for such damages is that monetary compensation is required to make the original transaction fair *because* possession could not be recovered once New York long ago sold the land to third parties. As New York's unlawful purchases began in 1795 and ended in 1846, the requested relief would in no sense "project redress ... into the present and future," 544 U.S. at 202, or otherwise run afoul of the practical considerations ad-

dressed in *Sherrill*. *See, e.g.*, *Shoshone Tribe of Indians* v. *United States*, 299 U.S. 476 (1937) (calculating just compensation to tribe on the basis of the land's value at the time of the original dispossession, plus interest).[7]

An award of damages to the Oneidas on the basis of the fair market value of the lands at the time that New York acquired them does not require any consideration of possession of the lands since then. New York's gain from buying the Oneidas' land for less than its true value is set forth in the State's own meticulous records from the time, which were included in the record below. C.A.J.A. A612-A619, E668-E697.

The Second Circuit denied the Oneidas' alternative request for such damages on the ground that it "effectively 'asks this Court to overturn years of settled land ownership.'" App. 45a (quoting *Cayuga*, 413 F.3d at 275). But an award of damages on the Oneidas' "non-possessory" claim would do no such thing. Rather, by directing that the Oneidas receive adequate compensation for the original transactions, the court would effectively *affirm* subsequent transfers and the titles of current landowners by recognizing that title had passed through transactions that could not be unwound. *See, e.g.*, *United States* v. *Minnesota*, 270 U.S. 181, 206 (1926) (awarding damages in lieu of canceling patent where unlawfully acquired land had been sold to third parties). Such an award would bring a final resolution to this dispute and put to rest any concern over potential disturbance to titles in the affected region.

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[7] In fact, New York advocated for that very measure of damages in *Cayuga*, in order to reduce its liability. *Cayuga* Appellants' Br. 218, *available at* 2003 WL 24300625.

### C. This Case Is Distinct From *Cayuga* In Critical Respects

This Court's denial of certiorari in *Cayuga* does not warrant denial of the present petition, for this case is distinct in several critical respects. First, the Cayugas did not bring a fair-compensation claim and *expressly rejected* a measure of damages that looked to the difference between the true value of the land and the price paid to the tribe at the time of conveyance. *See Cayuga* Appellees' Br. 164-165, *available at* 2003 WL 24300617. Presumably because the Cayugas had already been paid for that difference in an earlier settlement with the State,[8] they sought damages that were premised on the tribe's ongoing right to possession (through either an award of the *current* fair market value of the subject lands or trespass damages for the years since New York acquired them). In contrast, the Oneidas have presented one measure of damages that does not look past the State's final acquisition in 1846 (except to the extent of any interest that might be warranted) and that does not imply any tribal right of possession after that date.

Second, unlike the Oneidas, the Cayugas sought to continue their pursuit of ejectment of current landowners in an effort to regain possession of the subject lands. *Cayuga* Appellees' Br. 149-162. The Cayugas' pursuit of ejectment thus gave force to the concern that

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[8] New York acquired the Cayuga lands for 4 shillings per acre and promptly sold them for 16 shillings an acre; in 1909, the New York legislature authorized a payment to the tribe for that difference, then calculated at $247,609.33. *See People ex rel. Cayuga Nation of Indians* v. *Commissioners of Land Office*, 100 N.E. 735, 735-736 (N.Y. 1912).

recognition of a continuing possessory right could have "disruptive practical consequences." *Sherrill*, 544 U.S. at 219. The Oneidas have taken the opposite approach. Even before this Court's decision in *Sherrill*, they abandoned any claim of ejectment and in no way seek to disturb the title or possession of any current landowner.

Finally, while the Oneidas believe that *Cayuga* was wrongly decided, the decision could be read (and reconciled with this Court's cases) as an application of the traditional equitable doctrine of laches. *See* 413 F.3d at 277 ("We thus hold that the doctrine of laches bars the possessory land claim presented by the Cayugas here."). Because *Oneida II* did not completely foreclose the defense of laches, *see* 470 U.S. at 244 n.16, it was possible to construe *Cayuga* to avoid a direct conflict with the decisions of this Court. *See Cayuga*, 413 F.3d at 274. That is no longer true. The Second Circuit has now expressly abandoned any reliance on laches—and, with it, whatever restraint was present in *Cayuga*. *See* App. 25a (dismissing "laches" as merely "a convenient shorthand" and its doctrinal elements as "not ultimately important"). As there is no longer any way to reconcile the law of the Second Circuit with that of this Court, certiorari is warranted.

## II. THE DECISION BELOW NULLIFIES CONGRESS'S CONSIDERED JUDGMENT TO ALLOW TRIBES TO MAINTAIN CLAIMS ARISING FROM THE ILLEGAL ACQUISITION OF THEIR LAND

The court of appeals' invocation of "equitable considerations" to bar the Oneidas' claim also improperly encroaches on Congress's domain. The Oneidas' claim for money damages was brought within the statute of limitations that Congress prescribed for Indian land

claims like those here; in the judgment of Congress, as embodied in ICLA, the claim was timely and ought to be heard on its merits in federal court. The court of appeals was not free to substitute its own judgment on the timeliness of such claims for that of Congress.

This Court's review is needed to correct the court of appeals' failure to respect the limitations on the judicial role. Whether and when claims like the Oneidas' may be brought implicate the sort of "social balancing that is better left to Congress." *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 491 n.4 (2001). Where Congress has enacted legislation to implement its considered judgment on a matter of public policy, "[c]ourts of equity cannot, in their discretion, reject the balance that Congress has struck" in favor of their own. *Id.* at 497. To the contrary, the appropriate length of time in which a claim for damages may be brought is "quintessentially the kind of judgment to be made by a legislature." *Agency Holding Corp.* v. *Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 169 (1987) (Scalia, J., concurring in the judgment). Thus, this Court recognized long ago that "[l]aches within the term of the statute of limitations is no defense at law." *United States* v. *Mack*, 295 U.S. 480, 489 (1935).[9] Other courts of appeals faithfully adhere to that principle in a wide array of legal contexts.[10]

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[9] Although laches may in certain cases limit equitable relief within a statutory limitations period, the district court found (App. 83a) that the elements of laches were not met here—a finding the Second Circuit did not disturb.

[10] *See United States* v. *Rodriguez-Aguirre*, 264 F.3d 1195, 1207-1208 (10th Cir. 2001) ("Because laches is a judicially created equitable doctrine, whereas statutes of limitations are legislative

This principle—that equitable considerations like those invoked by the court of appeals cannot be used to displace explicit congressional statutes of limitations—is especially important in the context of Indian land claims, where the United States has a special trust relationship with the tribes, where Congress exercises plenary authority, and where Congress considered *the very claims the court of appeals barred* in passing the statute of limitations. In fashioning the statutory regime for administration of these claims (including the fixing of both their date of accrual and the applicable statute of limitations), Congress was acutely aware of the nature of the claims, in particular that they arose from violations of law dating back two centuries, and the potential effects of allowing those claims to be vindicated in federal court. Congress nonetheless permitted pre-1966 Indian land claims to be carried forward and brought within the prescribed statute of limitations, and indeed repeatedly extended the limitations period to ensure that these claims would be heard in the courts. *See* pp. 5-7, *supra*.

The court of appeals' disregard of Congress' careful work in favor of its own conception of equity was improper. *See Oakland Cannabis*, 532 U.S. at 497. What makes the court of appeals' decision particularly troubling is that the court considered precisely the same facts and circumstances that Congress considered in

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enactments, it has been observed that in deference to the doctrine of the separation of powers, the Supreme Court has been circumspect in adopting principles of equity in the context of enforcing federal statutes."); *accord Lyons P'ship* v. *Morris Costumes, Inc.*, 243 F.3d 789 (4th Cir. 2001); *Miller* v. *Maxwell's Int'l Inc.*, 991 F.2d 583, 586 (9th Cir. 1993); *Morgan* v. *Koch*, 419 F.2d 993, 996 (7th Cir. 1969).

fashioning the statute of limitations for Indian land claims (including, explicitly, the Oneidas'), and yet nonetheless reached a contrary conclusion about the fairness of Indians bringing their land claims for monetary damages in the latter half of the twentieth century. In applying its quasi-laches bar, the court of appeals emphasized the "tremendous expanse of time separat[ing] the events forming the predicate" for the claims and their assertion (App. 24a), the fact that the "subject lands have passed into the hands of a multitude of entities and individuals" (*id.*), and the "degree to which [the Indians'] claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury" (App. 25a-26a). Congress considered each of these factors in enacting and revising the statutory regime for Indian land claims, and thus in determining that claims like the Oneidas' should proceed to adjudication on the merits rather than be dismissed as untimely.

Congress was well aware of the age of the claims, *see, e.g.*, S. Rep. No. 95-236, at 2 (1977) ("Many of these claims go back to the 18th and 19th centuries[.]"), and acted in full recognition of the contention that the claims' vindication might somehow prove disruptive to the settled expectations of the individuals who presently reside on Indian land.[11] Congress, moreover, was

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[11] *See, e.g.*, S. Rep. No. 96-569, at 9 (1980) ("This committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated." (letter of Assistant Secretary of Indian Affairs Forrest Gerard to Senate Committee on Indian Affairs)); *see also* 123 Cong. Rec. 22,169 ("The situation would be ludicrous if it were not so serious and if the very homes and property of the people in

specifically aware of the age and scope of the Oneidas' claim.[12] Congress also heard submissions about the asserted "inequity and injustice" of vindicating the Indian claims,[13] but nonetheless determined that such claims should proceed. The court of appeals effectively vindicated the minority opinion in Congress by weighing the precise equities that Congress considered, and substituting for Congress's own judgment the panel majority's contrary view.[14]

Even under much more commonplace circumstances, this Court has held that a statute of limitations enacted by Congress is "definitive" and, for the courts' purposes, the "end of the matter." *Holmberg* v. *Armbrecht*, 327 U.S. 392, 395 (1946). "Although any statute

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this country were not affected and were not endangered." (statement of Rep. Moorhead)).

[12] *See* 123 Cong. Rec. 22,165 (1977) ("The Oneida Indian Nation claim in New York State is for approximately 240,000 acres of land and will affect a minimum of 20,000 defendants." (statement of Rep. Cohen)); *see also id.* at 22,170 (litigation of the Oneidas' claims could "wreck the economy of the region" (statement of Rep. Hanley)).

[13] *See* 123 Cong. Rec. 22,502 (1977) (expressing "concern[] about the basic inequity and injustice of reaching back as far as 180 years in prosecuting Indian claims that long ago would have been extinguished by any other rule of law against any other citizens in this country." (statement of Rep. Foley)).

[14] Congress's intent that Indian land claims should proceed was not merely theoretical, as evidenced by the numerous congressional acts ratifying settlements of such claims, providing compensation to the tribes. *See, e.g.*, Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721 *et seq.*; Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701 *et seq.*; Mohegan Nation (Connecticut) Land Claims Settlement Act, 25 U.S.C. §§ 1775 *et seq.*

of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson* v. *Railway Exp. Agency, Inc.*, 421 U.S. 454, 463-464 (1975). Indian land claims present a particularly forceful case for the proposition that categorical decisions about staleness and timeliness of claims are a matter of "social balancing that is better left to Congress." *Oakland Cannabis*, 532 U.S. at 491 n.4. Legitimate arguments based on policy and fairness can be made on either side of the debate about the wisdom of allowing Indian land claims to go forward, but Congress is best positioned to balance those considerations—and courts must honor Congress's judgment.

This Court has repeatedly emphasized the "institutional inappropriateness" of allowing a court to undermine a congressional balancing of interests "through the exercise of background equitable powers." *Lonchar* v. *Thomas*, 517 U.S. 314, 327, 328 (1996); *see, e.g.*, *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."); *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618, 625 (1978) (court may not award damages for loss of society where statute limits recovery to pecuniary loss, because "[i]n the area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries"). The court of appeals' decision deviates from this important principle, which forms the background against which Congress legislates, with ramifications wherever statutory law

and equitable powers meet. Review by this Court is needed to ensure that congressional policy judgments about the appropriate time in which a claim for damages may be brought are not set aside by judicial second-guessing.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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