Nos. 25-4604, 25-3600

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEDERATED INDIANS OF GRATON RANCHERIA,
Plaintiff-Appellee,

v.

KOI NATION OF NORTHERN CALIFORNIA,
Intervenor-Appellant,

On appeal from the U.S. District Court
for the Northern District of California
Case No. 3:24-cv-08582-RFL
Hon. Rita F. Lin

BRIEF OF ALASKA, IDAHO, KANSAS, LOUISIANA, MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, AND TEXAS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

STEPHEN J. COX
Attorney General

Jessica M. Alloway
Deputy Solicitor General
Christopher Orman
Senior Assistant Attorney General
Alaska Department of Law
1031 West Fourth Ave, Suite 200
Anchorage, AK 99501
(907) 269-6612
jessie.alloway@alaska.gov
christopher.orman@alaska.gov

Attorneys for Amicus Curiae
STATE OF ALASKA

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INTEREST OF THE *AMICI* STATES

States have a compelling interest in maintaining their sovereign authority and jurisdiction over the land within their borders. Through the Indian Reorganization Act, Congress delegated broad authority only to the Department of the Interior to take lands into trust for federally recognized tribes. When Interior exercises this delegated power, it creates "Indian country." *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655, 666 (9th Cir. 1975). Within Indian country, tribes exercise extensive control not only over their own members but also over the land itself, and in many circumstances, non-members on that land. States, on the other hand, are divested of core incidents of sovereignty within a tribe's territorial jurisdiction. *See Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 n.1 (1998) ("Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States.").

The Court's decision will have circuit-wide consequences, affecting every State except Hawai'i, each of which has federally recognized tribes within its borders. If Koi Nation is correct, then Interior holds the power to redraw jurisdictional maps throughout the West, and the States may seek judicial review only if the benefited tribe consents. Such a regime would upend settled principles

of federalism by subordinating state sovereignty to unilateral executive agency action insulated from meaningful judicial review.

The Court's decision carries especially consequential implications for Alaska.[1] Since territorial times, Alaska has been governed on the basic jurisdictional premise—reflecting the unique history of the lands and its Native populations—that there is nearly no Indian country in Alaska. Congress codified this understanding in 1971 when it enacted the Alaska Native Claims Settlement Act. Through ANCSA, Congress sought to "maxim[ize] participation by Natives in decisions affecting their rights and property . . . without creating a reservation system or lengthy wardship or trusteeship." 43 U.S.C. § 1601(b). Instead of creating hundreds of tribal territorial enclaves within the State, Congress gave land to newly created village and regional corporations—owned by and for the benefit of Alaska Natives—that are created under and subject to state law. *Id.* §§ 1618(a), 1606, 1607. These for-profit corporations hold land in fee. *Id.* at § 1613. In short,

[1] Although the Court's decision will have great significance in Alaska, the issues are not unique to the state. *See, e.g.*, *California v. U.S. Dep't of the Interior*, No. 3:25-cv-3850 (N.D. Cal.), appeal pending, No. 25-6860 (challenging the same agency order at issue in this case); *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001) (challenging an agency decision that land within Kansas constituted "Indian lands" within the meaning of the Indian Gaming Regulatory Act); *Rhode Island. v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994) (appealing an order concluding a tribe had jurisdiction and exercised governmental power over lands within the state).

as it often does, Congress deliberately established a system in Alaska unlike that of any other state. *See Yellen v. Confederated Tribes of the Chehalis Rsrv.*, 591 U.S. 338, 342 (2021) ("The 'simple truth' reflected in those prior cases is that 'Alaska is often the exception, not the rule.'").

The jurisdictional framework established by Congress in 1971 is now under sustained challenge. For the first 46 years after ANCSA's passage, Interior respected Congress's directives and declined to take any lands into trust in Alaska. That practice changed during the Obama administration. Since then, the issue has become a political pendulum, swinging with each successive change in administration.[2]

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[2] In 2017, Interior, for the first time since Alaska's statehood, accepted lands into trust in Alaska. It has since changed positions twice more and the current administration is reviewing the issue yet again. *See* Hilary C. Tompkins, Solicitor Opinion M-37043, "*Authority to Acquire Land into Trust in Alaska*" (Jan. 13, 2017); Daniel H. Jorjani, Solicitor Opinion M-37053, *"Withdrawal of Solicitor Opinion M-37043, 'Authority to Acquire Land into Trust in Alaska' Pending Review"* (June 29, 2018); Daniel H. Jorjani, Solicitor Opinion M-37064, "*Permanent Withdrawal of Solicitor Opinion M-37043, 'Authority to Acquire Land into Trust in Alaska'"* (Jan. 19, 2021); Robert T. Anderson, Solicitor Opinion M-37069, "*Withdrawal of M-37064 and Announcement of Consultation on the Department's Interpretation of the Indian Reorganization Act and the Alaska Native Claims Settlement Act in Connection with the Secretary's Land into Trust Authority*" (Apr. 27, 2021); Robert T. Anderson, Solicitor Opinion M-37076, "*The Secretary's Lands into Trust Authority for Alaska Natives and Alaska Tribes Under the Indian Reorganization Act and the Alaska Indian Reorganization Act"* (Nov. 16, 2022); Gregory Zerzan, *M-Opinion Review* (February 28, 2025). All documents referenced in this footnote are available on the Department of the Interior's website: https://www.doi.gov/solicitor/opinions.

Predictably, litigation has followed. Yet despite years of dispute, no appellate court has resolved whether the Secretary possesses authority to take Alaska tribes' lands into trust despite Congress's clear directive in ANCSA that its established system would lead to no new reservations or lengthy trusteeships.[3]

The stakes of that unresolved question are substantial. Alaska is home to 229 federally recognized tribes—approximately 39 percent of all federally recognized tribes nationwide. *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 89 Fed. Reg. 944, 2115 (Jan. 8, 2024). Granting the Secretary unilateral and unreviewable authority to transfer sovereign jurisdiction over land to Alaska's 227 reservation-less tribes would fundamentally reshape the State's jurisdictional landscape and significantly affect Alaska's sovereign interests.

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[3] Two district courts have concluded that the Secretary maintains the authority to take lands into trust in Alaska. *See Alaska v. Newland*, 2024 WL 3178000 (D. Alaska June 26, 2024), appeal pending, Nos. 24-5280, 24-5285 (9th Cir. filed August 23, 2024); *Akiachak Native Cmty v. Salazar*, 935 F.Supp.2d 195 (D.C. Ct. 2013), vacated as moot by *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 827 F.3d 100 (D.C. Cir. 2016). In both cases the tribes waived their sovereign immunity, but there is no guarantee that tribes will take a similar approach in future cases. And although the most recent case, *Alaska v. Newland*, is currently on appeal, the Tribe filed a motion to dismiss, contending the State appealed a non-final order because the district court remanded the action back to the agency. In briefing on the motion to dismiss, the Tribe offered no guarantee that it would waive its sovereign immunity again, should the agency reapprove the decision to take land into trust.

Alaska and the other amici states have a significant interest in preserving access to judicial review, which serves as a critical safeguard against the misuse of broadly delegated agency authority that would undermine their sovereign interests.

SUMMARY OF ARGUMENT

Congress has authorized judicial review of final agency action through the Administrative Procedure Act, waiving the Federal Government's sovereign immunity for suits seeking equitable relief. That waiver reflects a considered judgment that executive agency actions—particularly action with significant sovereign consequences—must remain subject to judicial scrutiny. Nothing in the APA conditions that review on the consent or participation of other sovereigns affected by the agency's decision.

Koi Nation's proposed application of Rule 19 would fundamentally alter that framework. If accepted, it would transform a procedural joinder rule into a mechanism for insulating the Secretary of the Interior's land-into-trust decisions from judicial review whenever a non-consenting sovereign—whether a tribe or a state—has an interest in the outcome. Applied consistently, that theory would render land-into-trust decisions effectively unreviewable, even when a tribe itself challenges an adverse agency action.

That result cannot be reconciled with the distinctive character of APA litigation or with Congress's express waiver of federal sovereign immunity. Nor is

it supported by statutory design. When Congress intends to limit judicial review of federal action implicating tribal interests, it does so expressly—as it did in the Quiet Title Act. The Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012), confirms that courts may not infer additional limits on judicial review based on policy concerns or the downstream effects of litigation on tribal interests.

Because land-into-trust decisions reallocate sovereign authority by removing land from the state's primary jurisdiction, insulating those decisions from judicial review would raise serious separation-of-powers and federalism concerns. Rule 19 cannot be applied in a manner that overrides Congress's legislatively enacted choices or permits a federal agency to evade judicial scrutiny by hiding behind the sovereign immunity of whichever sovereign benefits from its challenged decision. The Court should therefore decline to extend its Rule 19 jurisprudence in the manner Koi Nation proposes.

ARGUMENT

To be sure, "there is a 'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity." *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 857 (9th Cir. 2019). But the foundations of that wall are less settled than Koi Nation suggests. As Judge Miller recently observed, this Court's

decisions have "not given adequate weight to the distinctive character of APA litigation." *Maverick Gaming LLC v. United States*, 123 F.4th 960, 984 (9th Cir. 2024) (Miller, J., concurring). Nor has that wall been erected beyond this circuit; to the contrary, this Court's approach has "created a circuit conflict." *Id.* at 985 (citing *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250 (10th Cir. 2001); *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996)).

Even within the already distinctive context of APA litigation, this case presents features that further distinguish it from the cases on which Koi Nation relies. Most notably, the Court has not considered how its Rule 19 jurisprudence applies to a federal agency action, like the one at issue here, that implicates not only tribal interest, but also the sovereign interests of a state—another entity protected by sovereign immunity. Koi Nation's Rule 19 theory cannot be confined to the posture in which it is advanced here. Applied consistently, it would operate to insulate the Secretary's land-into-trust decisions from judicial review altogether—regardless of which sovereign seeks review, and even when a tribe itself challenges the agency's action. That result underscores the structural and doctrinal flaws in Koi Nation's approach and frames the analysis that follows.

I. Koi Nation's Rule 19 theory would render all Secretary's land-into-trust decisions effectively unreviewable, gutting the APA's judicial review provisions.

The Secretary's lands-in-trust authority implicates coexisting sovereign interests among states, tribes, and the Federal Government. When Koi Nation's argument is applied consistently, all these sovereign entities would be necessary parties to any litigation challenging a land-into-trust decision. This means both states and tribes would be able to intervene for the limited purpose of dismissal on sovereign immunity grounds. And Interior would be free to redraw jurisdictional boundaries throughout the western United States while escaping judicial review altogether. But Congress intended these decisions to be reviewable. 5 U.S.C. § 702. So, Koi Nation's theory cannot be correct.

Take, for example, the situation in Alaska. Suppose the current administration adopts a different policy than the last and denies the several applications pending to take land into trust on behalf of Alaska tribes. Like tribes, Alaska exercises inherent sovereign authority over its citizens and territory, and suits against it are barred absent a clear waiver or congressional abrogation. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996) ("For over a century, we have reaffirmed that the federal jurisdiction over suits against unconsenting States was not contemplated by the Constitution when establishing the judicial power of the United States." (internal quotations omitted)). Like tribes, Alaska has

a protected interest in the status of its lands—denying a tribe's application to take land into trust keeps the parcel within the State's primary jurisdiction instead of creating Indian country. *See Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 n.1 (1998) ("Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States."). And like tribes, Alaska cannot rely on the Federal Government to adequately represent its interests, particularly where Interior's trust responsibilities to tribes may diverge from the State's sovereign concerns. *See Maverick Gaming LLC*, 123 F.4th at 975 n.16 (recognizing that "the federal government cannot adequately represent an absent party's interest when there are tribes acting as plaintiffs in the same suit." (citing *Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990)); *Confederated Tribes of Chehalis Indian Rsrv. v. Lujan*, 928 F.2d 1496, 1500 (9th Cir. 1991) ("[T]he United States cannot adequately represent the [absent tribe's] interest without compromising the trust obligations owed to the plaintiff tribes.")).

Given Alaska's interests, Alaska would be a required party when an Alaska tribe sues the federal government for a denial of an application to take land into trust for that tribe. Applying Koi Nation's argument, Alaska could use Rule 19 to force dismissal based on its sovereign immunity. *See Jamul Action Committee v. Simermeyer*, 974 F.3d 984, 998 (9th Cir. 2020) ("Having concluded that the [tribe]

is a party required to be joined if feasible, the remaining steps of the Rule 19 analysis are straightforward."). There is no reason that the balancing of the equitable factors under Rule 19(b)—which "almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity, *id.* at 998—should come out any other way if it is Alaska, rather than the tribe, that benefits from the federal agency's decision. Sure, a tribe may advocate for dismissal when it benefits from the agency's decision, but Koi Nation's theory offers no principled answer for cases in which Interior's action does not benefit a tribe and instead favors a state.

An interpretation of Rule 19 that prevents both a state and tribe from challenging land-into-trust decisions fails to account for "the distinctive character of APA litigation." *Maverick Gaming*, 123 F.4th at 984 (Miller, J., concurring). Of the three sovereigns affected by land-into-trust decisions, only the Federal Government would benefit from such a rule: Interior could insulate decisions by hiding behind the sovereign immunity of whichever sovereign—state or tribe—benefits from the agency's action.[4] [*See* Interior's Br. at 31 ("[T]he upshot of Koi

[4] This application of Rule 19 also invites forum shopping. For instance, the plaintiff in *Maverick Gaming LLC* initially filed its complaint in the District of Columbia. *Maverick Gaming LLC*, 123 F.4th at 970 ("[T]he State Defendants moved to transfer venue to the Western District of Washington based on the D.C. District's lack of personal jurisdiction over them and in the interests of justice and convenience."). That circuit's precedent would not have supported dismissing the plaintiff's APA claim on Rule 19 grounds. *See Ramah Navajo Sch. Bd.*, 87 F.3d at 1338; *De Csepel v. Republic of Hungary*, 27 F.4th 736, 746 (D.C. Cir. 2022), cert. denied, 143 S. Ct. 630 (2023)). The State of Alaska has faced similar tactics in

Nation's argument that tribal sovereign immunity bars adjudication of this claim is that any Interior official could—at least in theory—wield improperly delegated authority to issue significant decisions, free from judicial review, so long as a tribe has a cognizable interest in the agency action."); FIGR's Br. at 27 (arguing that "agencies, unlike judges, would be allowed to make all . . . interpretive decisions based on policy rather than independent legal judgment")]

Such a result contravenes Congress's expressed intent, which was to make these federal actions reviewable. Under the APA, a person—including a state or a tribe—"adversely affected or aggrieved by agency action within the meaning of a relevant statute" may seek judicial review so long as the relief sought is "other than money damages." 5 U.S.C. § 702. The proper defendant in such actions is the relevant federal agency or officer, or the United States itself. *Id.*; *see also* 5 U.S.C. § 703 ("If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer."). The APA "does not authorize relief against any party other than the agency." *Maverick Gaming*, 123 F.4th at 984 (Miller, J., concurring).

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related disputes over the extent of an Alaska tribe's territorial jurisdiction. *See Alaska v. U.S. Dep't of the Interior*, 2025 WL 1730193 (D.D.C. June 23, 2025) (granting a tribe's motion to transfer the State's complaint to the District of Alaska).

In short, Koi Nation's proposed application of Rule 19 would transform a procedural joinder rule into a mechanism for insulating federal agency action from judicial review, regardless of which sovereign benefits from the Secretary's decision. That outcome cannot be squared with the distinctive character of the APA, where Congress expressly permitted judicial review of final agency action through suits against the Federal Government alone.

II. When Congress intends to limit judicial review of federal actions or federal interests that implicate tribal interests, it does so expressly.

When Congress intends to limit judicial review of a federal action against the Federal Government because that action implicates tribal interests, Congress makes that limitation clear. The Quiet Title Act provides an example.

The Quiet Title Act waives federal sovereign immunity for quiet title actions—suits asserting a "right, title, or interest" in real property that conflicts with a "right, title, or interest" claimed by the United States. 28 U.S.C. § 2409a(d). The statute, however, contains an exception: the Quiet Title Act's authorization of suit "does not apply to trust or restricted Indians lands." *Id.* § 2409a(a).

At first glance, the Court might view that language as relevant here, given that the Federated Indians of Graton Rancheria challenged the Secretary's acquisition of land into-trust on behalf of Koi Nation. *See* 3-ER-409 (requesting "the Court enter a declaratory judgment that the Project ROD, Decision Letter and

Final EIS are invalid, null, and *void ab initio* and consequently that the land into trust transaction has never been effectuated").

The Federal Government previously thought that was the case too. For at least two decades, Interior argued that any challenge to the acquisition of trust land was, in substance, a quiet title action because success would ultimately divest the United States of title to the land. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012) (arguing the Quiet Title Act barred Patchak's challenge to the Secretary's acquisition of land on behalf of the tribe); Petition for a Writ of Certiorari, *U.S. Dep't of the Interior v. South Dakota*, 1996 WL 34432929, at *7 (June 3, 1996) ("Once the property is actually conveyed to the United States, however, a suit to disturb title would be barred, because the Quiet Title Act 'does not apply to trust or restricted Indian lands.'" (internal citation omitted) (quoting 28 U.S.C. § 2409a(a)). Alternatively, the Federal Government believed that the APA's waiver of sovereign immunity was also unavailable because the Quiet Title Act "expressly or impliedly forb[ade] the relief which [was] sought." *Patchak*, 567 U.S. at 215 (discussing the Government's arguments regarding 5 U.S.C. § 702).

Interior did not rely solely on statutory text to support its position. It also invoked policy considerations and legislative history—arguing, as Koi Nation does here, that permitting challenges to land-into-trust decisions would "abridge the

historic relationship between the Federal Government and the Indians without the consent of the Indians." Brief for the Federal Petitioners, *Patchak*, 2012 WL 416751, at 23 (*quoting* Before the Subcomm. on Public Lands of the Senate Comm. on Interior & Insular Affairs, 92d Cong., 1st Sess. 19 (1971)). In Interior's view, the potential impact of litigation on tribal interests justified insulating land-into-trust decisions from judicial review absent tribal consent.

The Supreme Court squarely rejected Interior's approach, adopting an interpretation that preserved judicial review even after the land had been acquired into trust. In *Patchak*, the plaintiff challenged the Secretary's acquisition of land in trust for the tribe's proposed casino. 567 U.S. at 214. About five months after Patchak filed suit, the Secretary acquired the tribal property in trust for the tribe. *Id.* at 213–14. Rejecting Interior's interpretation that the claim was now barred by the Quiet Title Act because it involved restricted trust land, the Court held that when a plaintiff challenges the legality of the Secretary's decision to take land into trust—rather than asserting a competing property interest—the suit does not fall within the Quiet Title Act at all and instead proceeds under the Administrative Procedure Act. *Patchak*, 567 U.S. at 217–18. The Court acknowledged Interior's policy concerns were "not without force," but emphasized that those considerations were for Congress to weigh in defining the scope of sovereign-immunity waivers. *Id.* at 224. Courts, the Supreme Court made clear, may not narrow a

congressionally enacted waiver of sovereign immunity based on their own assessment of the interests implicated by judicial review. Therefore, Mr. Patchak's lawsuit could proceed, even though Interior had since taken the property into trust.[5]

The Quiet Title Act and the Supreme Court's decision in *Patchak* are relevant here for two reasons.

First, when Congress intends to bar suits involving the Federal Government that also affect tribal interests, it does so expressly. The Quiet Title Act's waiver explicitly excludes trust and restricted Indian lands. 28 U.S.C. § 2409a(a). If the Ninth Circuit's "wall of authority" operated as Koi Nation suggests, the language in the Quiet Title Act would have been superfluous—because any suit challenging the Federal Government's acquisition of the land on behalf of a tribe would necessarily threaten the tribe's interest in having the land held in trust and therefore could not proceed without the tribe's consent under Rule 19.

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[5] Congress eventually responded to the Court's invitation. Following remand, Congress enacted legislation that reaffirmed the trust status of the land, ratified and confirmed the Secretary's decision to take the land into trust, and provided that "[n]otwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land [at issue in this case] shall not be filed or maintained in a Federal court and shall be promptly dismissed." Gun Lane Trust Land Reaffirmation Act, Pub. L. No. 113-179, § 2(b), 128 Stat. 1913. The district court subsequently dismissed Patchak's suit, explaining that the "clear intent" of Congress was "to moot this litigation." *Patchak v. Jewell*, 109 F. Supp. 3d 152, 159 (D.D.C. 2015). That decision was upheld by the D.C. Circuit, *Patchak v. Jewell*, 828 F.3d 995 (2016), and the Supreme Court, *Patchak v. Zinke*, 583 U.S. 244 (2018).

Second, *Patchak* confirms that the judiciary may not redefine the statutory scope of judicial review. *Patchak*, 567 U.S. at 224. This is because, as the Supreme Court explained, Congress's decisions to waive the Federal Government's sovereign immunity necessarily reflect policy judgments. *Id.* Whether Congress should limit the waiver for actions brought under the Administrative Procedure Act as it did for actions under the Quiet Title Act is therefore a question for Congress—not the courts.

Accordingly, this Court should decline to extend its Rule 19 jurisprudence in a manner that would effectively graft a new, atextual exception onto the Administrative Procedure Act's waiver of federal sovereign immunity. Where Congress has chosen to permit judicial review of federal agency action—and has declined to condition that review on tribal consent—the courts may not foreclose it by invoking prudential doctrines that Congress itself did not adopt. Doing so would not respect tribal sovereignty; it would instead displace Congress's considered judgment.

CONCLUSION

Rule 19 cannot be used to shield the Secretary's land-into-trust decisions from judicial review. The Court should affirm the district court's denial of Koi Nation's motion to dismiss.

December 29, 2025

Respectfully submitted,

STEPHEN J. COX
ATTORNEY GENERAL

/s/ Jessica M. Alloway
Jessica M. Alloway
Deputy Solicitor General
Christopher Orman
Senior Assistant Attorney General
Alaska Department of Law
1031 West Fourth Ave, Suite 200
Anchorage, AK 99501
(907) 269-6612
jessie.alloway@alaska.gov
christopher.orman@alaska.gov

Counsel for Amici Curiae
STATE OF ALASKA

ADDITIONAL SIGNATORIES

Raúl R. Labrador
Attorney General of Idaho

Kris W. Kobach
Attorney General of Kansas

Liz Murrill
Attorney General of Louisiana

Austin Knudsen
Attorney General of Montana

Michael T. Hilgers
Attorney General of Nebraska

Drew H. Wrigley
Attorney General of North Dakota

Alan Wilson
Attorney General of South Carolina

Marty Jackley
Attorney General of South Dakota

Ken Paxton
Attorney General of Texas

CERTIFICATE OF COMPLIANCE

This brief contains 3,950 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6). I certify that this brief is an amicus brief and complies with the word limit of FRAP 29(a)(5).

Date: December 29, 2025.

/s/ *Jessica M. Alloway*
Jessica M. Alloway
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellant ACMS system.

Participants in the case who are registered ACMS users will be served by the appellate ACMS system.

Date: December 29, 2025.

/s/ *Jessica M. Alloway*
Jessica M. Alloway
Deputy Solicitor General