No. 20-791

IN THE

Supreme Court of the United States

EGLISE BAPTISTE BETHANIE
DE FT. LAUDERDALE, INC., *et al.*,
Petitioners,

v.

SEMINOLE TRIBE OF FLORIDA, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR THE SEMINOLE TRIBE OF FLORIDA IN OPPOSITION

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QUESTION PRESENTED

Whether the doctrine of tribal sovereign immunity bars a lawsuit brought against a federally recognized Indian tribe in an action under 18 U.S.C. § 248, the Freedom of Access to Clinic Entrances.

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BRIEF IN OPPOSITION

Respondent, Seminole Tribe of Florida, respectfully requests that the Petition for Writ of Certiorari ("Petition") be denied.

INTRODUCTION

Petitioners seek to challenge the doctrine of tribal sovereign immunity in an action brought pursuant to 18 U.S.C. § 248 against a federally recognized Indian tribe, despite the overwhelming precedent that establishes the breadth of the doctrine of tribal sovereign immunity. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998). This Court "sparingly exercise[s]" its power to grant certiorari, and this case does not present any basis for departing from a consistent application of this principle. *Camreta v. Greene*, 563 U.S. 692, 709 (2011).

For reasons discussed more fully below, there is no need for this Court to grant certiorari review, as there is no conflict among the lower courts regarding the application of the doctrine of tribal sovereign immunity in a case like this. Both the Southern District of Florida ("district court") and the Eleventh Circuit Court of Appeal ("Eleventh Circuit") appropriately and accurately applied this Court's sovereign immunity jurisprudence when it found no abrogation or waiver of the Seminole Tribe of Florida's tribal sovereign immunity for the action brought against it under 18 U.S.C. § 248.

This Court continues to defer to Congress to define the limits of tribal sovereign immunity. Until Congress acts, an Indian tribe is entitled to its sovereignty. Petitioners nevertheless ask this Court to fashion a new exception, without offering any new or compelling

reason to do so, and even though they have alternative remedies available to obtain relief for their alleged claims. This Court should again decline the invitation to curtail tribal sovereign immunity where Congress has not seen fit to do so.

STATEMENT OF THE CASE

The Seminole Tribe of Florida is a federally recognized Indian tribe. The Seminole Police Department is a subordinate governmental agency of the Seminole Tribe of Florida. Pet. for Writ. of Cert. ¶ 3.

On or about September 29, 2019, Petitioners purportedly held a weekly Sabbath service at its church property when six (6) unidentified individuals who allegedly wore Seminole Police Department uniforms "traveled from SemTribe's reservation in two vehicles, one of them an SPD marked squad car" and

> (a) entered the Church Property, (b) disabled the Church Property's surveillance cameras, (c) expelled from the Church Property all the worshipers who opposed [Respondent, Aida] Auguste, (d) changed the locks to the doors of the religious structure located on the Church Property, (e) seized the business records of Eglise Baptiste and (f) locked the gates to the Church Property.

Pet. for Writ. of Cert. ¶¶ 2, 10.

In reaction to the aforementioned events, Petitioners initiated an action in the district court on October 17, 2019 against both the Seminole Tribe of Florida and Aida Auguste. Petitioners subsequently filed their First Amended Complaint on December 1, 2019 in the district court, naming approximately seventy-six (76) additional plaintiffs for the same alleged incident, each individually suing the Seminole Tribe of Florida

under 18 U.S.C. § 248(c)(1). Petitioner, Eglise Baptiste Bethanie de Ft. Lauderdale, Inc., also brought causes of action against only the Seminole Tribe of Florida for state law claims of Interference With Business Relationships and Trespass against the Seminole Tribe of Florida.[1]

Despite Petitioners' acknowledgement that the Seminole Tribe of Florida is a federally recognized Indian tribe, and that the Seminole Police Department is a governmental agency of the Seminole Tribe of Florida, Petitioners state:

> [t]he judicial doctrine of tribal sovereign immunity does not insulate SemTribe from the claims which Plaintiffs have asserted against SemTribe in this civil action because: (a) the actions of SemTribe's police officers took place more than eleven (11) miles away from SemTribe's Hollywood, Florida, reservation; (b) prior to September 29, 2019, Plaintiffs had not had an opportunity to negotiate with SemTribe for a waiver of SemTribe's tribal sovereign immunity; and (c) other than this civil action, Plaintiffs have no means by which to secure monetary compensation for SemTribe's infringements of Plaintiffs' rights under Federal and Florida law.

Pet. for Writ. of Cert. ¶¶ 11.

The Seminole Tribe of Florida subsequently moved to dismiss Petitioners' First Amended Complaint for

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[1] Petitioners attempted to drop the state law claims in a Proposed Second Amended Complaint; however, the district court denied the Motion for Leave to File a Second Amended Complaint in its Omnibus Order dated January 3, 2020.

lack of subject matter jurisdiction pursuant to the doctrine of tribal sovereign immunity. The district court entered its Omnibus Order dismissing Petitioners' claims with prejudice on January 3, 2020, holding, in relevant part, that Petitioners failed to satisfy their burden to establish the lower court's jurisdiction as the Seminole Tribe of Florida was "entitled to tribal sovereign immunity. . . based on the extensive case law from both the Supreme Court and the Eleventh Circuit establishing that an Indian tribe is entitled to immunity from suit unless there is a clear waiver by the tribe or some unequivocal statutory abrogation of such immunity by Congress." *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Fla.*, 19-CV-62591, 2020 WL 43221, at *8 (S.D. Fla. Jan. 3, 2020). The district court further recognized that it was "undisputed that Defendant Seminole Tribe did not expressly waive its immunity from suit," and explained that "[a]bsent some definitive language making it unmistakably clear that Congress intended to abrogate tribal sovereign immunity in enacting [18 U.S.C. § 248], the Court concludes that Defendant Seminole Tribe is entitled to immunity from suit in the instant action." *Id.* at *7.

Petitioners appealed. On August 10, 2020, the Eleventh Circuit affirmed the district court's findings, and held that "Congress knows how to expressly subject an Indian tribe to private suit in state or federal court; it did not do so when it enacted § 248." *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Fla.*, 824 Fed. Appx. 680, 682 (11th Cir. 2020). Thus, the Eleventh Circuit held that the "Seminole Tribe is entitled to tribal sovereign immunity and was appropriately dismissed from this suit." *Id.* This Petition followed.

REASONS TO DENY THE PETITION

I. The Eleventh Circuit's Decision Is Correct and Consistent with this Court's Well-Settled Precedent on Tribal Sovereign Immunity.

This Court should deny certiorari because the Eleventh Circuit's decision follows directly from Supreme Court precedent on tribal sovereign immunity and does not conflict with the existing precedent of any other circuit court.

The Seminole Tribe of Florida is a federally recognized Indian tribe. Tribes are "separate sovereigns pre-existing the Constitution." *Bay Mills Indian Cmty.*, 572 U.S. at 788 (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)). While Indian tribes are "domestic dependent nations," they continue to "exercise 'inherent sovereign authority.'" *Id.* (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)). One of the "core aspects of sovereignty that tribes possess" is their sovereign immunity, which this Court has regarded as "a necessary corollary to Indian sovereignty and self-governance." *Id*. (quoting *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890 (1986)*; see Id.* at 789 ("It is 'inherent in the nature of sovereignty not to be amenable' to suit without consent." (quoting The Federalist No. 81, at 511 (Alexander Hamilton) (Benjamin Wright ed. 1961)).

In *Bay Mills*, this Court reaffirmed that the "baseline position . . . is tribal immunity." *Id.* at 790. There are only two exceptions to tribal sovereign immunity: (1) where "Congress has authorized [a] suit," and (2) where the tribe has "waived" its immunity. *Id.* at

789. Based on these limited exceptions, this Court has "time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Id.* Following this settled precedent, this Court has "sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred" – applying tribal sovereign immunity "both on and off [a] reservation" and declining to distinguish "between governmental and commercial activities of a tribe." *Kiowa Tribe of Okla.*, 523 at 754-55; *Puyallup Tribe, Inc. v. Dep't of Game of State of Wash.*, 433 U.S. 165, 167 (1977).

It is undisputed that the Seminole Tribe of Florida did not waive its tribal sovereign immunity for the instant action. *See Eglise Baptiste Bethanie De Ft. Lauderdale, Inc.*, 2020 WL 43221, at *7. Petitioners do not, and cannot, point to any congressional abrogation of tribal sovereign immunity in 18 U.S.C. § 248.[2] As the Eleventh Circuit concluded, in the absence of a congressional abrogation of immunity or a tribal waiver, the Seminole Tribe of Florida is "entitled to tribal sovereign immunity and was appropriately dismissed from this suit." *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc.*, 824 Fed. Appx. at 682. Petitioners do not argue that the Eleventh Circuit's

[2] When Congress abrogates tribal sovereign immunity, it must "'unequivocally' express [its] purpose' to subject a tribe to litigation." *Bay Mills Indian Cmty.*, 572 U.S. at 794 (quoting *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001)); *Santa Clara Pueblo*, 436 U.S. at 58 (expressing that it is well-settled that any waiver of an Indian tribe's sovereign immunity "'cannot be implied but must be unequivocally expressed'") (quoting *United States v. Testan*, 424 U.S. 392, 399 (1976)); *see. e.g., Okla. Tax Comm'n*, 498 U.S. at 509; *Turner v. United States*, 248 U.S. 354, 358 (1919).

decision is inconsistent with this Court's well-settled precedent on tribal sovereign immunity, or point to any relevant circuit split of authority. No such split of authority exists. Petitioners, therefore, ask this Court to depart from settled, widely-applied precedent, and carve out a new exception to tribal sovereign immunity in order to provide Petitioners with their preferred remedy. This Court has refused such invitations before, and should refuse again.

In *Bay Mills*, this Court declined to overturn its precedent from *Kiowa* and, in doing so, acknowledged that it "does not overturn its precedents lightly." *Bay Mills Indian Cmty.*, 572 U.S. at 798. This Court recognized that "*[s]tare decisis*. . . 'is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Id.* at 798 (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). Although *stare decisis* is "not an inexorable command," it does require that there be a "special justification" for "any departure." *Payne*, 501 U.S. at 827; *Bay Mills Indian Cmty.*, 572 U.S. at 798 (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)). No such "special justification" exists here. Rather, this Court's well-settled precedent establishes that absent any congressional abrogation or waiver of the Seminole Tribe of Florida's immunity, neither of which occurred here, the doctrine of tribal sovereign immunity bars any lawsuit brought against it.

II. This Court Should Deny Certiorari in Deference to Congress's Plenary and Exclusive Authority to Alter the Limits of Tribal Sovereign Immunity.

This Court's precedent illustrates that it has repeatedly deferred to Congress's decision not to narrow the scope of the doctrine of tribal sovereign immunity and, instead, consistently reaffirms that the 'doctrine of tribal immunity is settled law. . . .'" *Bay Mills Indian Cmty.*, 572 U.S. at 790, 798, 803 (quoting *Kiowa Tribe of Okla.*, 523 U.S. at 756). This Court has "declined" to carve out exceptions to the doctrine of tribal sovereign immunity in a piecemeal fashion, explaining that "it is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity. The special brand of sovereignty the tribes retain—both its nature and its extent—rests in the hands of Congress." *Id.* at 800.

As this Court has recognized and explained, Congress "has the greater capacity to 'weigh and accommodate the competing policy concerns and reliance interests.'" *Id.* at 800–01; *see Kiowa Tribe of Okla.*, 523 at 760; *Oklahoma Tax Comm'n*, 498 U.S. at 510 (declaring that "Congress has always been at liberty to dispense with such tribal immunity or to limit it. Although Congress has occasionally authorized limited classes of suits against Indian tribes . . . Congress has consistently reiterated its approval of the immunity doctrine"). As such, "a fundamental commitment of Indian law is judicial respect for Congress's primary role in defining the contours of tribal sovereignty." *Bay Mills Indian Cmty.*, 572 U.S. at 803. This Court, therefore, has declined to create a "freestanding exception to tribal immunity" that "would entail both overthrowing our precedent and usurping Congress's current policy judgment." *Id.* at 804.

Nothing has changed to call for any departure from this Court's well-established practice in that regard. The statute upon which Petitioners' rely—18 U.S.C. § 248, a criminal statute that also may provide civil remedies in some instances—is devoid of any statement from Congress which expressly and unequivocally abrogates an Indian tribe's sovereign immunity from suit. § 248(a)(2) & 248(c)(1). Had Congress intended to abrogate tribal sovereign immunity for criminal misconduct, it certainly could have done so in 18 U.S.C. § 248. It did not. *See Bay Mills Indian Cmty.*, 572 U.S. at 794 (reiterating that "[t]his Court does not revise legislation" and that "'Congress wrote the statute it wrote' – meaning, a statute going so far and no further"); *see also Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (finding that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit"); *Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126, 1128 (11th Cir. 1999) (holding that "Congress abrogates tribal immunity only where the definitive language of the statute itself states an intent either to abolish Indian tribes' common law immunity or to subject tribes to suit under the act"); *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1242 (11th Cir. 1999) (recognizing "two well-established principles of statutory construction: that Congress may abrogate a sovereign's immunity only by using statutory language that makes its intention unmistakably clear, and that ambiguities in federal laws implicating Indian rights must be resolved in the Indians' favor"). This type of "policy judgment" is precisely what this Court, in *Bay Mills*, reserved for Congress. *Bay Mills Indian Cmty.*, 572 U.S. at 804.

III. Petitioners' Claim that They Lack Alternative Remedies is Both Irrelevant and Wrong.

In a final bid to get this Court's attention, Petitioners wrongly contend that they have no other means to "secure monetary compensation for SemTribe's infringements of [Petitioners'] rights under Federal and Florida law[,]" Pet. for Writ of Cert., ¶ 11, and seek support from a footnote in *Bay Mills* – a case that, as discussed above, firmly supports the Seminole Tribe of Florida's position that the Petitioners' suit is barred by tribal sovereign immunity. In that footnote, this Court indicated that it has "never specifically addressed . . . whether immunity should apply in the ordinary way if a tort victim . . . has no alternative way to obtain relief for off-reservation commercial conduct." *Bay Mills*, 572 U.S. at 799, n.8.[3]

Petitioners' claim that they lack alternative remedies is simply not true. Petitioners do in fact have alternative remedies, and have pursued those remedies;

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[3] The Alabama Supreme Court is the only court to reject tribal sovereign immunity in light of footnote 8 in *Bay Mills* in concluding that the application of "tribal sovereign immunity to tribes' off-reservation commercial activities" do not "sufficiently outweigh the interests of justice as to merit extending that doctrine to shield tribes from tort claims asserted by individuals who have no personal or commercial relationship to the tribe." *Wilkes v. PCI Gaming Auth.*, 287 So. 3d 330, 334 (Ala. 2017). However, the Alabama Supreme Court's decision involved commercial activity by a tribe, something that is not involved in this case. In addition the Alabama decision "has never been cited by any circuit court," and should not be relied on to "override" established "case law dismissing damages claims based on tribal sovereign immunity or the case law from . . . circuits upholding sovereign immunity for claims sounding in tort." *Jones v. Alabama-Coushatta Tribe of Texas*, No. 20-CV-63, 2021 WL 118037, at *2 (E.D. Tex. Jan. 13, 2021).

for one, Petitioners have initiated an action against Aida Auguste in state court. Pet. for Writ of Cert., ¶ 9. Petitioners may also have an alternative remedy against other individuals who are the real parties in interest. *See, e.g., Lewis v. Clarke,* 137 S. Ct. 1285, 1288 (2017) (rejecting the argument that "an Indian tribe's sovereign immunity bars individual-capacity damages actions against tribal employees for torts committed within the scope of their employment"). While "sovereign immunity bars . . . the most efficient remedy," it still applies to bar suit "[w]ithout authorization from Congress" or "absent consent to be sued." *Okla. Tax. Comm'n*, 498 U.S. at 514; *Kiowa Tribe of Okla.*, 523 U.S. at 757.

In any event, although the Court in *Bay Mills* had no occasion to consider the result when no alternative remedy exists, 572 U.S. at 799, n.8, this Court's precedent provides an answer to those circumstances. Specifically, when a litigant claims "a right without a remedy" due to sovereign immunity, the remedy is to "seek appropriate legislation from Congress." *Okla. Tax Comm'n*, 498 at 514. This is consistent with the approach that this Court has taken on deferring to Congress to "weigh and accommodate the competing policy concerns and reliance interests" when considering the scope of tribal sovereign immunity. *Kiowa Tribe of Okla.*, 523 U.S. at 758; *see also Seminole Tribe of Fla.*, 181 F.3d at 1244 ("implying that [a] lack of forum in which to pursue [a] claim has no bearing on the tribal sovereign immunity analysis") (citing *Fla. Paraplegic Assoc.,* 166 F.3d at 1134); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990) (recognizing that "[s]overeign immunity may leave a party with no forum for its claims"). As such, this Court should decline Petitioners' attempt to bypass

Congress' designated role in defining the scope of tribal sovereign immunity.

Under these familiar principles, this case presents an even easier case for tribal sovereign immunity than *Bay Mills* did, as it does not involve off-reservation *commercial* conduct, but rather off-reservation *non-commercial* conduct. Although *Bay Mills* was a 5-4 decision, the Seminole Tribe of Florida would be immune from suit under the views expressed by all nine members of the Court. In *Bay Mills*, this Court followed precedent declining "to make any exception" to sovereign immunity "for suits arising from a tribe's commercial activities, even when they take place off Indian lands." *Bay Mills Indian Cmty.*, 572 U.S. at 790. Justice Thomas, joined by three other dissenters, would have held that Indian tribes lack sovereign immunity for "off-reservation commercial acts." *Id.* at 815 (Thomas, J., dissenting). He explained that "comity is an ill-fitting justification for extending immunity to tribe's off-reservation commercial activities," given that "[e]ven with respect to fully sovereign nations, comity has long been discarded as a sufficient reason to grant immunity for commercial acts." *Id.* at 817 (Thomas, J. dissenting). Thus, even under *Bay Mills* dissenters' reasoning, the Seminole Tribe of Florida is immune from Petitioners' suit.

CONCLUSION

For the forgoing reasons, Respondent, Seminole Tribe of Florida, respectfully requests this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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