Docket No. 20-35683

In the

United States Court of Appeals

For the

Ninth Circuit

THOMAS G. LANDRETH,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; QUINAULT INDIAN NATION and DOES, Persons or Parties Unknown who may have an interest in property at Township 23 North, Range 10 West, Section 13, Lot 19,

Defendants-Appellees.

Appeal from a Decision of the United States District Court for the Western District of Washington, No. 3:20-cv-05333-RBL · Honorable Ronald B. Leighton

DEFENDANT-APPELLEE QUINAULT INDIAN NATION'S ANSWERING BRIEF

ROB ROY SMITH, ESQ.
RACHEL B. SAIMONS, ESQ.
KILPATRICK TOWNSEND & STOCKTON, LLP
1420 Fifth Avenue, Suite 3700
Seattle, Washington 98101
(206) 467-9600 Telephone
RRSmith@kilpatricktownsend.com
RSaimons@kilpatricktownsend.com

KAREN ALLSTON, ESQ.
QUINAULT INDIAN NATION
Post Office Box 613
Taholah, Washington 98587-0613
(360) 276-8215 Ext. 636 Telephone
kallston@quinault.org

Attorneys for Appellee Quinault Indian Nation

COUNSEL PRESS · (213) 680-2300 PRINTED ON RECYCLED PAPER

CORPORATE DISCLOSURE STATEMENT

Pursuant to the Federal Rules of Appellate Procedure 26.1, the undersigned counsel for Defendant-Appellee the Quinault Indian Nation, certifies that the Nation does not have a parent corporation and no publicly-held corporation owns stock in the Quinault Indian Nation.

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INTRODUCTION

Over 163 years ago, the United States and the Quinault Indian Nation ("Nation") executed the 1856 Treaty of Olympia. Shortly thereafter, in 1873, President Ulysses S. Grant issued an executive order which established the Quinault Indian Reservation. Since that time, it is well-established that Lake Quinault lies entirely within the boundaries of the Reservation, and that the United States holds title to the bed and banks of the entire lake in trust for the Nation.

Appellant Thomas Landreth ("Landreth") owns property which abuts Lake Quinault. In recent years, the Nation has required that some of the owners of property on the shores of the lake apply for certain permits, and have also prohibited owners from undertaking certain activities and repairs. In response, Landreth has spent the last six years attempting to litigate ownership of Lake Quinault to remove it and its shores from the Nation's jurisdiction through multiple suits against the Nation, the United States, and the State of Washington. Landreth has brought suit in state court, federal district court, and the Court of Federal Claims, and has been met with dismissal of his claims each time. Twice now, the District Court has dismissed Landreth's claims on the basis of the Nation's unwaived inherent sovereign immunity.

Undeterred, Landreth now appeals the District Court's most recent Order dismissing his claims on the grounds that the Nation is immune from suit, that

there is no waiver of its inherent sovereign immunity, and that there is no relief available to Landreth under the Quiet Title Act ("QTA"). Despite what is clearly wishful thinking from Landreth that this Court will find otherwise on appeal, the facts and the law of this case necessitate affirmance of the District Court's dismissal. Landreth's evident displeasure with the doctrine of tribal sovereign immunity and continuing vexatious litigation does not—and cannot—change fundamental principles. The Nation is immune from this suit, and there has been no waiver of that immunity under the Quiet Title Act or otherwise. Nor can Landreth cure this jurisdictional defect through his other baseless claims. This Court should affirm the District Court's Order.

JURISDICTIONAL STATEMENT

This is an appeal from the final order and judgment of the United States District Court for the Western District of Washington dated July 29, 2020 granting Quinault Indian Nation's Motion to Dismiss on the basis of lack of subject matter jurisdiction, and dismissing Appellant Thomas Landreth's Complaint dated April 6, 2020. SER-93-124. The basis for jurisdiction in the District Court was federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED

I. Whether this Court's review should be limited to the issues necessary to determine whether the District Court properly dismissed Landreth's Complaint.

II. Whether the District Court properly dismissed Landreth's Complaint for lack of subject matter jurisdiction based on the Nation's inherent sovereign immunity.

III. Whether the District Court properly determined that Landreth could not state a claim under the Quiet Title Act.

IV. Whether the District Court properly determined that Landreth's remaining claims for money damages, possible criminal prosecution, and potential renegotiation of the Treaty of Olympia were baseless and could not cure the jurisdictional issues which are fatal to his claim.

V. Whether Landreth should be declared a vexatious litigant and subjected to a pre-filing requirement, where he has repeatedly and unsuccessfully sued the Nation and the United States for the same issues, and continues to frivolously assert claims against both parties.

STATEMENT OF THE CASE

The Nation is a federally recognized sovereign Indian tribe and is a signatory to the Treaty of Olympia (12 Stat. 971 (1856)) in which it reserved to

itself certain rights and ceded certain lands in exchange for permanent settlement on the Quinault Indian Reservation and other reserved rights. Acting pursuant to the Treaty of Olympia, President Grant signed an Executive Order on November 4, 1873 (I Kapp. 923 (1904)) setting aside 350 square miles of land that became known as the Quinault Indian Reservation. Lake Quinault, which is the subject of Landreth's Complaint, lies entirely within the exterior boundaries of the area set aside by the Executive Order as the Quinault Indian Reservation.

Landreth owns property abutting Lake Quinault. SER-4.[1] He has filed four lawsuits since 2014 seeking to challenge the Nation's ownership of, and jurisdiction over, Lake Quinault. *Id.* First, in 2014, Landreth and other plaintiffs filed *North Quinault Properties LLC, et al. v. Quinault Indian Nation, et al*., 3:14-cv-06025 (W.D. Wash. Dec. 30, 2014). In that action, Landreth filed suit against both the Nation and the State of Washington, seeking a "court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake" and a "court determination as to the public's right to access of the Lake, its shore and lakebed." SER-130-160. Specifically, Landreth sought a declaration that the "United States and the Tribe have no right, title or interest in

[1] Appellant Landreth provided this document as part of the Excerpts of Record at Dkt. Entry 4-1, Pages 13-20; however, the document is not numbered as required by this Court's rules or indicated in the required index. The Nation hereby provides this document to correct the record.

Lake Quinault," (SER-155) and an injunction prohibiting the Nation from regulating conduct on the Lake. SER-158-159. The District Court dismissed the case because neither the Nation nor the State had waived their immunity to suit. SER-125-127.

Following the dismissal of *North Quinault Properties*, Landreth brought suit in state court against only the State of Washington in *North Quinault Properties, LLC v. State of Washington,* No. 76017-3-1, 2017 WL 401397, at *1 (Wash. Ct. App. Jan. 30, 2017) (unpublished). Similar to the *North Quinault Properties* case, Landreth, joined by a handful of other landowners, sought a "court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake," and a "determination as to the public's right to access of the Lake, its shore and lakebed." *Id*. at *1. Similar to the first federal action, the state court suit was dismissed, this time for failure to join the Nation and the United States, and an appeal of that decision was unsuccessful. *Id.* at *1 (affirming dismissal of action with prejudice on summary judgment).

In 2018, Landreth took a third bite at the apple when he filed a complaint in the United States Court of Federal Claims. *Landreth v. United States*, 144 Fed.Cl. 52 (2019). That case was dismissed due to a lack of subject matter jurisdiction because none of the claims he alleged were against the United States and because he sought equitable relief (a declaration as to his rights to Lake Quinault) that the

Court of Federal Claims is without jurisdiction to grant. *Id.* at 55. The Court of Federal Claims' dismissal was upheld by the United States Court of Appeals for the Federal Circuit. *Landreth v. United States*, 797 Fed.Appx. 521 (2020) (unpublished).

Now, Landreth is litigating his fourth challenge to the Nation's ownership of Lake Quinault, returning to the first forum in which he sought relief. Landreth filed the instant case in the Western District of Washington on April 6, 2020 against both the Nation and the United States. SER-93-124. The nature of Landreth's Complaint was not entirely clear, as he made a variety of claims and sought several forms of relief. For example, although he pleaded a claim for Conversion of Property, he cited many other legal authorities including, but not limited to, the Equal Footing Doctrine, Public Trust Doctrine, the Indian Civil Rights Act, Equal Protection Amendment, and 16 U.S.C. § 474 pertaining to national forest surveys. SER-95-96. Landreth also styled the Complaint as, in part, a quiet title action by listing 28 U.S.C. § 2409a, (the Quiet Title Act) as a relevant statute, and seeking relief through "removal of the cloud of ownership of the 75 by 40 feet of shore land below the High Water Mark, abutting my lake front property on the north sure of Lake Quinault." SER-116. Landreth also sought "redress for the crimes committed by the Quinault Indian Tribe," and "redress in the amount of 250,000 dollars." SER-119. Adding to the confusion, Landreth further asked the

Court to "consider re-negotiation of the 1856 Treaty of Olympia," (SER-120) and to review *United States v. Washington,* 294 F. 2d 830 (9th Cir. 1961) regarding the doctrine of accretion. SER-122. In sum, Landreth's Complaint ran the gamut both in terms of his claims and the requested relief.

The Nation filed a motion to dismiss on June 19, 2020, arguing that the District Court lacked subject matter jurisdiction to hear the case based on the Nation's immunity from suit as a federally-recognized sovereign Indian tribe, and that the relief sought by Landreth was barred by the QTA. SER-68-92. On June 24, 2020, the United States also filed a motion to dismiss, similarly asserting that the District Court lacked subject matter jurisdiction. SER-56-67. On July 29, 2020, the District Court granted both the Nation's and the United States' motions, and dismissed Landreth's claims. SER-3-10.

The District Court found that the Nation was immune from suit, that Landreth's claims that the Court had jurisdiction because Lake Quinault is navigable and the public has an interest in its use were "inconsistent with settled law," and that Landreth could not state a claim under the QTA to "remove the cloud of ownership on his property" because of the Indian Land Exception. SER-9-10. The District Court also concluded that Landreth's remaining claims were "baseless." SER-6. As it was without power to adjudicate the matter, the District Court dismissed Landreth's claims without prejudice but emphasized that Landreth

"should not view that legal determination as an invitation to file a fifth lawsuit on this topic." SER-10.

Having failed to accept his previous losses, Landreth now appeals both District Court's Order dismissing his claims as well as various questions not properly before this Court. The styling of Landreth's Informal Opening Brief makes the basis for his appeal murky at best. However, among the issues that Landreth identifies for review by this Court are: whether Lake Quinault is a navigable waterway; Landreth's property rights as to ownership of shore land and ingress/egress to Lake Quinault; whether the Nation has violated the Administrative Procedure Act; whether the Court of Federal Claims properly decided *Quinault v. United States,* 102 Ct. Cl. 823 (1945); and whether the Bureau of Land Management's Historical Index of public lands is accurate. Opening Br. at 51–55. Landreth does not appear to ask this Court to determine whether the District Court properly found that the Nation was immune from suit, or whether it properly determined that he could not seek relief under the QTA, which were the two primary decisions actually made by the District Court. *Id.*

SUMMARY OF THE ARGUMENT

Landreth has sought this Court's review on many issues, most of which were not addressed or considered by the District Court in issuing its July 29, 2020 Order and are, therefore, outside the scope of this Court's jurisdiction in reviewing a final

order. This Court should decline to review any issue raised by Landreth which is unrelated to the Order dismissing his claims. Additionally, Landreth failed to raise any issue with respect to the District Court's actual findings as to sovereign immunity and the Quiet Title Act as grounds for appeal in his Opening Brief. Consequently, he should be deemed to have waived any challenge to those findings.

Should this Court reach the jurisdiction issues decided by the District Court, this Court should affirm the District Court's Order dismissing Landreth's claims. The District Court correctly determined that, as a federally-recognized sovereign Indian tribe, the Nation is immune from Landreth's suit absent a waiver—which does not exist. The District Court also properly determined that Landreth could not state a claim under the QTA to "remove the cloud of ownership on his property," as the Indian Land Exception to the QTA prevented him from doing so. Finally, the District Court correctly concluded that Landreth's remaining claims, based on a variety of inapplicable legal theories, were baseless and could not cure the jurisdictional issues which are fatal to his claim. This Court should affirm the District Court's Order.

Lastly, this appeal continues six years' worth of baseless litigation by Landreth against the Nation, the United States, and/or the State of Washington in different courts based on the same issues, despite having lost every suit he has

filed. By continuing to pursue the same baseless claims, Landreth has become a vexatious litigant and should accordingly be precluded from filing new litigation absent leave of court. This Court should exercise its inherent authority under the All Writs Act to bar him from bringing further baseless lawsuits against the Nation.

ARGUMENT

I. Standard of Review

This Court reviews *de novo* the issue of tribal sovereign immunity and dismissals based on sovereign immunity. *Clinton v. Babbitt*, 180 F.3d 1081, 1086 (9th Cir. 1999); *Jachetta v. United States*, 653 F.3d 898, 903 (9th Cir. 2011). With respect to pleadings, *pro se* litigants are held to a less stringent standard than an attorney is held to with formal pleadings. *Garmon v. Cty. of Los Angeles*, 828 F.3d 837, 846 (9th Cir. 2016). *Pro se* pleadings are construed liberally and *pro se* litigants are afforded "the benefit of any doubt." *Id.* (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)).

II. The Court's Review Should Be Limited to the Issues Necessary to Determine Whether the District Court Properly Dismissed Landreth's Claims.

Pursuant to 28 U.S.C. § 1291, this Court has jurisdiction to review appeals from all final decisions of the district courts of the United States. An order on a motion to dismiss without prejudice is a final decision for purposes of appeal. *Laub*

v. U.S. Dep't of Interior, 342 F.3d 1080, 1085 (9th Cir. 2003). The District Court's Order dismissing Landreth's claims is, therefore, the only appealable final decision to be reviewed by this Court de novo. This Court may affirm on any basis in the record. *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Hall v. N. Am. Van Lines, Inc.,* 476 F.3d 683, 686 (9th Cir. 2007) (the court of appeals "'may affirm on any basis supported by the record, whether or not relied upon by the district court.'").

Landreth requests that the Court review a number of issues which are unrelated to the final appealable order of the District Court in this case. Landreth asks the Court to determine if Lake Quinault is a navigable waterway, determine the extent of his property rights, address the charging of fees by the Nation to place a boat into Lake Quinault, and "determine if the United States has permitted the QIN to violate several federal laws for self-governing Indian Tribes." Opening Br. at 51–54. Landreth also requests that the Court review the 75-year old decision by the Court of Claims in *Quinault v. United States*, 102 Ct. Cl. 823 (1945), determine "if Washington state acquired the lake bed and water of Lake Quinault under the Equal Footing Doctrine," determine if the Bureau of Land Management's Historical Index of public lands is true and accurate, "confirm if the Constitution adopted in 1787/88 and laws of the United States are still valid today and did not cease in 1920," determine if certain statements made in the Cook Creek Feasibility

Study of May 1964 are true and accurate," and "confirm if The Federal Bureau of Land Management (FBLM) glossary terms used by the FBLM are true and accurate." Opening Br. at 53–54.

The District Court made no findings with respect to any of the foregoing issues, nor were they pertinent to the Court's analysis of subject matter jurisdiction in dismissing Landreth's claims. These issues are far outside the scope of the final appealable order, and are not subject to review by this Court. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (explaining that "[i]t is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below.") This Court should decline to consider any issue raised on appeal by Landreth which is unrelated to the District Court's Order dismissing his claims on jurisdictional grounds.

Further, ordinarily, the Court will not consider matters on appeal that are not "specifically and distinctly argued in [the] appellant's opening brief." *Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003). Here, Landreth fails to raise both of the issues which were dispositive to the District Court's Order dismissing the claims. Among the litany of issues that Landreth asks the Court to review, conspicuously absent is whether the District Court properly found that his claims were defeated by the Nation's sovereign immunity or whether it properly

determined that he could not state a claim under the Quiet Title Act.[2] SER-6. By failing to raise these issues in his Opening Brief, Landreth has waived any argument that the District Court incorrectly determined these issues. *See Paciulan v. George*, 229 F.3d 1226, 1230 (9th Cir. 2000) (issue not raised in appellants' opening brief was waived). On this basis alone, the Court should affirm the District Court's Order without further analysis.

III. The District Court Properly Dismissed Landreth's Complaint for Lack of Subject Matter Jurisdiction, Based on the Nation's Sovereign Immunity.

Should this Court review the two jurisdictional findings that were the fundamental grounds for the District Court's dismissal of Landreth's claims, it must still affirm the District Court's Order.

The District Court found that, as a federally-recognized sovereign Indian tribe, the Nation enjoys sovereign immunity from suit and that it had moved to dismiss "based on a simple and powerful argument: it has not waived its sovereign immunity, and the Court does not have subject matter jurisdiction over Landreth's claims against it." SER-5. As the District Court explained, Landreth did not

[2] Landreth asks the Court to "review the United States argument that Appellant cannot tie his injury to any act or omission of the United States over the past century and determine the Quiet Title Action or Administrative Procedure or Admiralty and Maritime Jurisdiction." Opening Br. at 52. Although the scope of his requested review is unclear, it does not appear to relate to the findings as applied to his QTA claim against the Nation.

address this argument, but "instead describe[d] the history of the land, the Treaty of Olympia, the QIN Reservation, Washington State, and Olympic National Park." *Id.* The District Court found no basis for waiver of the Tribe's sovereign immunity, and concluded that the Nation's immunity necessitated dismissal for lack of subject matter jurisdiction. SER-6. This determination was correct and should be affirmed.

A. The Nation Is Immune from Suit

As a federally recognized tribe, the Nation is shielded from Landreth's claims by the well-established doctrine of tribal sovereign immunity. *See Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016 (9th Cir. 2016) ("Among the core aspects of sovereignty that tribes possess . . . is the common-law immunity from suit traditionally enjoyed by sovereign powers."). The U.S. Supreme Court has "time and again treated the 'doctrine of tribal immunity [as] settled law' and dismiss[es] any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 789 (2014); *see also Kiowa Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998).

Both this Court and the U.S. Supreme Court have consistently held that a waiver of sovereign immunity cannot be implied but must be "unequivocally expressed." *Quileute Indian Tribe v. Babbitt*, 18 F.3d 456, 459 (9th Cir. 1994);

Oklahoma Tax Commission v. Citizens Band of Potawanomi Tribe of Okla., 498 U.S. 505, 509 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (2001). Absent such a waiver, tribal sovereign immunity precludes subject matter jurisdiction. *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008 (9th Cir. 2007). Sovereign immunity is not a discretionary doctrine because it is a bar to suit and in the absence of any waiver of it, dismissal is proper. *Powelson v. United States,* 150 F.3d 1103, 1104-1105 (9th Cir. 1998); *California v. Quechan Tribe*, 595 F.2d 1153, 1155 (9th Cir. 1979).

B. There Has Been No Waiver of the Nation's Sovereign Immunity

Landreth has not, and cannot, point to any express waiver of the Nation's immunity to his claims—because no waiver exists. In his Complaint, Landreth appears to have relied on the Washington Supreme Court's decision in *Lundgren v. Upper Skagit Indian Tribe*, 187 Wash.2d 857, 389 P.3d 569 (2017), *vacated and remanded by* 138 S. Ct. 1649 (2018), to assert that the Nation "cannot assert sovereign immunity because the suit relates to in rem immovable property."). SER-121. *Lundgren* does not change the settled law on sovereign immunity, does not substitute for the absence of an express waiver by the Nation, and is inapposite.

The *Lundgren* case involved a quiet title action to settle a dispute between the Lundgrens and the Upper Skagit Indian Tribe ("Tribe") over the boundary of land within the Tribe's ceded area. *Id*. at 1652. The Washington State Supreme

Court rejected the Tribe's defense of sovereign immunity, reasoning "that sovereign immunity does not apply to cases where a judge 'exercis[es] in rem jurisdiction' to quiet title in a parcel of land owned by a Tribe, but only to cases where a judge seeks to exercise *in personam* jurisdiction over the Tribe itself." *Id*.

As the Nation explained below, Landreth's reliance on *Lundgren* is misplaced. In finding that sovereign immunity did not apply to in rem cases, the Washington Supreme Court incorrectly relied on *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251 (1992). As a result, *Lundgren* was vacated and remanded by the U.S. Supreme Court in *Upper Skagit Indian Tribe v. Lundgren*, ---- U.S. ---- , 138 S.Ct. 1649 (2018). There, the Supreme Court found that *Yakima* "did not address the scope of tribal sovereign immunity," but instead addressed whether the General Allotment Act rendered allottees and their fee-patented land subject to state regulations and taxes. *Id*. at 1649, 1653. The U.S. Supreme Court thus concluded that *Yakima* "resolved nothing about the law of sovereign immunity." *Id*. And, courts that have directly considered whether tribal sovereign immunity bars *in rem* actions have concluded that it does. *See Cayuga Indian Nation v. Seneca County, N.Y.*, 761 F.3d 218, 221 (2d Cir. 2014) (declining to draw a distinction between *in rem* and *in personam* proceedings, and therefore, finding no implied abrogation of tribal sovereign immunity); *see also Save the Valley, LLC v. Santa Ynez Band of Chumash Indians*,

2015 WL 12552060, at *3 (C.D. Cal. July 2, 2015) (rejecting the argument that there is an *in rem* exception to the defense of sovereign immunity).

The Nation is immune from suit, and Landreth has not identified any waiver by the Nation or Congress as would be required to abrogate its sovereign immunity. The District Court's correct finding that it lacked subject matter jurisdiction to hear Landreth's claims against the Nation should be affirmed.

IV. The District Court Properly Determined That Landreth Could Not State a Claim Under the Quiet Title Act.

In moving to dismiss Landreth's Complaint, the Nation argued that the relief Landreth sought was barred by the QTA, as the QTA specifically excludes "trust or restricted Indian lands." 28 U.S.C. § 2409a(a). The District Court concluded that not only was the Nation correct that this Indian land exception "creates an 'insuperable hurdle' to suits to challenge the government's interest in Indian trust or restricted land," but that Landreth even "appeared to concede as much," asserting only that absent relief under the QTA, he would be left with no recourse. SER-6. The District Court correctly concluded that while Landreth's frustration was understandable, "the fact that he has no remedy is not a basis for inferring a waiver of sovereign immunity, or ignoring the QTA's plain language." *Id.*

The land at issue in Landreth's Complaint is what he describes as "the shore land between the ordinary high water and the ordinary low water at the actual low

water in the summer months as well as the ingress and egress of navigable[3] Lake Quinault." SER-98. Contrary to Landreth's assertion, there can be no credible dispute about the status of Lake Quinault and that the United States holds title to the bed and banks in trust for the Nation. Lake Quinault lies entirely within the boundaries of the area set aside by the Executive Order, by its plain language, as the Quinault Indian Reservation. It is also well-established that, contrary to Landreth's statements, Lake Quinault has long been recognized to lie within the Nation's Reservation boundaries. *See United States v. Washington*, 626 F. Supp. 1405, 1428 (W.D. Wash. 1981) (finding that the "Quinault Reservation . . . tapers to Lake Quinault about 21 miles inland, *which is contained within the reservation and represents its easternmost portion*."), *aff'd* 694 F.2d 188 (9th Cir. 1982) (Canby, J. concurring), *cert. denied*, 463 U.S. 1207 (1983) (emphasis added); *Quinaielt Tribe of Indians v. United States,* 102 Ct. Cl. 822, 835 (1945) (finding that northwest boundary point of the Reservation was such as to include the entire Lake within the Reservation); Dep't of Interior Sol. Op. at 2 (July 21, 1961) (concluding that the "boundaries of the reservation include the entire lake [and] the

[3] The Nation disputes Landreth's allegation that Lake Quinault is a navigable waterway. *See* SER-98; SER-13; Opening Br. at 46. However, as that issue goes to the merits of the case and is beyond the scope of the District Court's Order, it is not addressed herein.

United States holds title to the bed of the entire lake in trust for the Indians of the Quinault Reservation.").

Thus, the relief that Landreth seeks is only available by bringing suit against the United States, which—like the Nation—is immune from suit absent a waiver. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). With regard to suits to quiet title to land in which the United States claims an interest, that waiver comes exclusively through the QTA. *See Block v. North Dakota,* 461 U.S. 273, 286 (1983) (The QTA is "the exclusive means by which adverse claimants [can] challenge the United States' title to real property."). However, even with a waiver of the United States' immunity for the QTA, such a waiver "does not apply to trust or restricted Indian lands." *See* 28 U.S.C. § 2409a(a); s*ee also United States v. Mottaz*, 476 U.S. 834, 842, 843 (1986) (noting that the Indian land exception "operates solely to retain the United States' immunity from suit by third parties challenging the United States' title to land held in trust for Indians" and that "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity.").

Congress included the Indian land exception based on the recommendation of the Solicitor for the Department of the Interior because:

> excluding suits against the United States seeking title to lands held by the United States in trust for Indians was necessary to prevent abridgment of 'solemn obligations'

> and 'specific commitments' that the Federal Government had made to the Indians regarding Indian lands. A unilateral waiver of the Federal Government's immunity would subject those lands to suit without the Indians' consent.

Id. at 842, n. 6 (citing H.R.Rep. No. 92–1559, p. 13 (1972)). All that is required to invoke the Indian land exception is that the United States has a colorable claim that the land in question is trust or restricted fee. *Alaska Dep't of Natural Resources v. United States*, 816 F.3d 580, 585 (9th Cir. 2016) (citing *Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987)). Indeed, the QTA Indian land exception applies "without regard to the ultimate validity of [the United States'] assertions" that the land is trust or restricted fee Indian land. *State of Alaska v. Babbitt,* 75 F.3d 449, 452 (9th Cir. 1995). The government's immunity "applies whether the government is right or wrong." *Id.* (citations and internal quotation marks omitted). Further, the QTA and its legislative history are void of anything that even "suggests that the United States was to be put to the burden of establishing its title when it has a colorable claim and has chosen to assert its immunity on behalf of land of which the government declares that it is the trustee for Indians." *State of Alaska v. Babbitt,* 38 F.3d 1068, 1073 (9th Cir. 1994) (citing *Wildman*, 827 F.2d at 1309). All that is necessary is that the government's claim not be arbitrary or frivolous. *See Alaska Dep't of Natural Resources,* 816 F.3d at 585.

Both the QTA and its Indian land exception apply even if a plaintiff claims less than a fee simple interest in the land in question. *See id.; see also State of Alaska*, 38 F.3d at 1074. The exception also applies to claimants, who, "while not seeking to quiet title in themselves, might potentially affect the property rights of others through successfully litigating their claims." *State of Alaska*, 38 F.3d at 1074. The Indian land exception to the QTA's waiver of the United States' immunity creates an insurmountable obstacle to suits to challenge the government's interest in Indian trust or restricted land. *Id.* at 1075. It also applies without regard to whether there is an alternate means of review and may leave a party with no forum for its claims. *Id.* at 1077 (citing *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990)).

The QTA and its Indian land exception, therefore, make the relief Landreth seeks (*i.e.*, the quieting of title to himself and other similarly situated land owners to the bed of the Lake) unavailable, and the Court should affirm the District Court's finding that Landreth cannot state a claim under the QTA.

V. The District Court Properly Determined That Landreth's Remaining Claims Were Baseless and Could Not Cure the Jurisdictional Issues Which Are Fatal To His Claim.

The District Court concluded, in granting the Nation's Motion to Dismiss, that "Landreth's remaining claims (for money damages, possible criminal prosecution, and potential renegotiation of the Treaty of Olympia) are baseless and

do not cure the fatal-to-his-claims jurisdictional problem." SER-6. Although the style of his Complaint makes it difficult to parse the precise nature of each of Landreth's other claims, the District Court was correct: Landreth's claims are baseless, and not grounded in law or fact.

For example, in claiming money damages, Landreth "request[s] the court to pay redress in the amount of 250,000.00 dollars out of the annuities as suggested in Article 8 of the 1856 Treaty of Olympia." SER-119. Article 8 of the Treaty provides, in relevant part, that:

> The said tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens; and should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities.

12 Stat. 971. Any such "Indian depredation" claim, however, is barred. As the Federal Circuit Court of Appeals already held in one of Landreth's earlier suits, any claims for depredation which occurred after the passage of the Act of March 3, 1891, ch. 538, 26 Stat. 851 (1891) are prohibited. *Landreth v. United States*, 797 Fed. Appx. 521, 522 (Fed. Cir. 2020). Thus, "[Landreth's] claims are more than a century too late." *Landreth v. United States*, 144 Fed. Cl. 52, 55 (2019), *aff'd*, 797 Fed. Appx. 521 (Fed. Cir. 2020). This decision of the Federal Circuit is not subject

to implied collateral attack by this Court; the proper court in which he should have sought such review was the United States Supreme Court.

Similarly, Landreth's requests for possible criminal prosecution fails, as it is well-established that such relief is not available in a civil lawsuit. *See, e.g., Clinton v. Jones*, 520 U.S. 681, 718 (1997) (Breyer, J., concurring) (explaining that criminal proceedings, unlike private civil proceedings, are public acts initiated and controlled by the Executive Branch); *Anderson v. Anderson*, 3:13-CV-1762-SI, 2013 WL 5787459, at *2, n.1 (D. Or. Oct. 28, 2013) (noting that seeking the criminal prosecution of a person is not a viable remedy in a civil lawsuit). Nor is the renegotiation of the Treaty of Olympia a viable form of relief. *See Tinian Women Ass'n v. United States Dep't of the Navy*, 976 F.3d 832, 835 (9th Cir. 2020) (claim was not redressable because it would require renegotiation of a treaty); *Salmon Spawning & Recovery All. v. Gutierrez*, 545 F.3d 1220, 1228 (9th Cir. 2008) (explaining that court could not order renegotiation of treaty).

While Landreth's claims are wholly without merit, it is not necessary for the Court to wade into these issues, given that the Nation is immune from suit and the case can be resolved on jurisdictional grounds. *Ruiz v. Snohomish Cty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1165 (9th Cir. 2016) (lack of jurisdiction "depriv[es] the court of the authority to rule on the merits"). Even assuming, *arguendo*, that there was any validity to Landreth's remaining claims on the merits, none could

cure the threshold jurisdictional defect of sovereign immunity. The District Court correctly determined that it lacked the power to adjudicate Landreth's claims, that the claims were baseless, and that the claims could not cure the fatal jurisdictional issue. These findings should be affirmed.

VI. Landreth Should Be Declared a Vexatious Litigant and a Pre-Filing Order Should Be Imposed.

This Court has recognized that "[t]here is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances." *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (citing *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)). The All Writs Act codifies this inherent power and provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Act provides federal courts with the inherent power to enter pre-filing orders against vexatious litigants. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007).

Although a court should enter a pre-filing order constraining a litigant's scope of actions in future cases only after a "cautious review of the pertinent circumstances," *id.*, "flagrant abuse of the judicial process cannot be tolerated

because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long*, 912 F.2d at 1148. Before imposing a pre-filing order on a vexatious litigant, the Court must find that four elements are satisfied: 1) notice to the litigant sufficient to oppose the order; 2) an adequate record for review to show that the litigant is abusing the judicial system; 3) substantive findings as to the frivolous or harassing nature of the litigant's actions; and 4) that the order is narrow tailored to closely fit the specific vice encountered. *Id.* at 1147–48. All four elements are met here.

As noted, this is an appeal of Landreth's fourth lawsuit on the same subject matter since 2014. Landreth's claims against the Nation were dismissed by the District Court based on the Nation's sovereign immunity over five years ago in *North Quinault Properties*, 3:14-cv-06025-RBL (W.D. Wash. May 5, 2015). His lawsuit in state court was also dismissed for failure to join the Nation (because of its sovereign immunity) and the United States (because of its sovereign immunity), both of which claim an interest in Lake Quinault and which would be prejudiced by any decision made about the Lake in their absence. *N. Quinault Properties, LLC v. State*, 197 Wn. App. 1056, *3 (2017) (unpublished). His subsequent lawsuit in the United States Court of Federal Claims was similarly dismissed due to a lack of subject matter jurisdiction. *Landreth v. United States*, 144 Fed.Cl. 52, 55 (2019). That dismissal was upheld by the Federal Circuit. *Landreth v. United States*, 797

Fed.Appx. 521 (2020) (unpublished). Despite these repeated dismissals, Landreth nonetheless filed yet another case in District Court against the Nation, the dismissal of which he now appeals. There is reason to believe yet another lawsuit may follow, despite the District Court's admonition that Landreth "should not view that legal determination as an invitation to file a fifth lawsuit on this topic." SER-6.

Landreth's continued litigation against the Nation for the same, baseless claims is an abuse of both the judicial system and of the Nation's resources. That the District Court took care to emphasize to Landreth that he should not view the most recent dismissal of his claims as "an invitation to file a fifth lawsuit" (*id*.) is a clear indication that he has gone beyond the scope of a reasonable litigant. Landreth may not agree with any of the previous courts' dispositions of his claims, but that does not entitle him to continue to require the Nation to expend its resources responding to meritless complaints and appeals. This Court should exercise its authority to declare Landreth a vexatious litigant, and the Court should enter a pre-filing order requiring him to obtain leave of court before filing any additional lawsuits against the Nation.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Date: December 17, 2020

/s/ Rob Roy Smith
Rob Roy Smith, WSBA No. 33798
Rachel B. Saimons, WSBA No. 46553
Kilpatrick Townsend & Stockton, LLP
1420 Fifth Avenue, Suite 3700
Seattle, Washington 98101
Tel: (206) 467-9600
RRSmith@kilpatricktownsend.com
RSaimons@kilpatricktownsend.com

Karen Allston, WSBA No. 25336
Quinault Indian Nation
PO Box 613
Taholah, WA 98587-0613
Tel: (360) 276-8215 Ext. 636
kallston@quinault.org

Attorneys for Quinault Indian Nation

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s): 20-35683

I am the attorney or self-represented party.

This brief contains 6,304 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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UNITED STATES COURT OF APPEALS
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Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

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The undersigned attorney or self-represented party states the following:

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UNITED STATES COURT OF APPEALS
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Thomas G Landreth, 425 Chenault Avenue, Hoquiam, WA 98550
Email: tbland100@gmail.com

Description of Document(s) *(required for all documents)*:

1. Answering Brief; and
2. Supplemental Excerpts of Record

Signature */s/ Rob Roy Smith* **Date** December 17, 2020