No. 23-939

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PETITIONER,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR CITIZENS EQUAL RIGHTS FOUNDATION AS AMICUS CURIAE SUPPORTING NEITHER PARTY

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INTEREST OF THE *AMICUS CURIAE*

The Citizen Equal Rights Foundation ("CERF") was established by the Citizens Equal Rights Alliance ("CERA"). Both CERA and CERF are South Dakota non-profit corporations. CERA has both Indian and non-Indian members in 34 states. CERF was established to protect and support the constitutional rights of all people, provide education and training concerning constitutional rights, and participate in legal actions that adversely impact constitutional rights of CERA members.[1] CERF is writing this *amicus curiae* brief to explain why federalism, as engineered in the structure of the Constitution, was fundamentally broken after the Civil War when the United States was allowed to retain what have become permanent federal territorial war powers over Native Americans. CERF now steps up to explain how this wrongfully preserved sovereign authority in the 1871 Indian policy is threatening our Constitutional self-governance with Petitioner asserting absolute sovereign immunity in the President. Amicus submits this *amicus curiae* brief not supporting either party in this case because unlimited sovereign authority threatens to destroy our constitutional government.

SUMMARY OF ARGUMENT

The United States Department of Justice (USDOJ) has been actively trying to expand the

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[1] Pursuant to Rule 37.6 of the Court, no counsel for a party has authored this brief, in whole or in part. No person or entity, other than *amicus curiae*, CERF, its members or its parent CERA's members, or its counsel have made any monetary contribution to the preparation or submission of this brief.

unlimited authority of the national government over Indians as a "hidden agenda" since it was created in 1870. Petitioner and the public are likely unaware of how far USDOJ has pushed unlimited federal sovereignty through the 1871 Indian policy into the Nixon Indian policy of 1970. Petitioner was apparently told these extra-constitutional powers exist, most likely by Co-Conspirator 4,[2] but he was not told enough to either have tribal leaders at his speech on the Ellipse on January 6, 2021 or to include tribal voting rights in his claims on why the election results were false. If he had known how the USDOJ "hidden agenda" actually works and included tribal leaders and tribal election issues there is a real question whether he would be subject to prosecution.

Historically, limiting the national government's sovereign authority has been problematic since our founding. The first section of this brief will explain how slavery forced the sovereignty of the national government beyond the limits of the Constitution. For slavery to be "constitutional," the sovereignty of the federal government had to include the political prerogative of the English King to classify individual rights based on race, religion, or ethnicity under the doctrine of discovery. It is the usage of these unlimited territorial war powers within the boundaries of the United States that threatens all constitutional rights

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[2] *See United States v. Donald J. Trump*, Case No. 1:23-cr-00257 (D.C.D.C. Aug. 1, 2023) at paras. 71-85 <https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf> discussing Petitioner's dealings with Co-Conspirator 4, who was the U.S. Assistant Attorney General directing USDOJ's Environment and Natural Resources Division (ENRD), that protects tribal rights.

and processes and could be considered as giving the President and Congress absolute sovereign immunity.

The second section of this brief will detail how these extra-constitutional powers were unleashed against the American people by USDOJ, acts of Congress, and from the Court's decision in *Dred Scott v. Sanford*, 60 U.S. 393 (1857) into Reconstruction, and how President Nixon went even further. If President Trump has made a mistake, it is by openly and blatantly using these powers in full view instead of using them insidiously as a "hidden agenda," as USDOJ has to evade constitutional restraints and avoid criminal charges.

In the last section of this brief, CERF will explain how to permanently resolve this sovereignty problem. Fully applying Section One of the Fourteenth Amendment to the federal government in the same way it applies to the States will allow this Court to confine the sovereignty of the federal government to the limits of the Constitution.

Neither political party wants this to happen. Since just before the Nixon presidency, both political parties have used these extra-constitutional powers rather than govern under the Constitution. This case can be used to permanently end the use of the "hidden agenda" by USDOJ, Congress, and/or the President by denying the existence of absolute sovereign immunity.

ARGUMENT

The United States has two sets of domestic laws. The first set of laws are the regular domestic laws that respect the constitutional limitations and apply to all. The second set of laws are those based on continuing domestic territorial war powers over Indians deemed

"plenary" powers of Congress that include the 1871 Indian policy that preserved these powers as expanded in *Dred Scott v. Sandford*, 60 U.S. 393 (1857) to preserve slavery indefinitely. *See* Act of March 3, 1871, Rev. Stat. §2079, 16 Stat. 566 (codified as 25 U.S.C. §71). *See also* 18 U.S.C. §1151-1153, 43 U.S.C. §1457-1458 and 43 U.S.C. §1701(a)(1). This extra-constitutional sovereign authority is based on the assumed succession of the national government to the full authority of the English King. These laws are not subject to constitutional rights constraints, and are always applied to a specific class of persons or by treating a State as a Territory.

The Framers of the Constitution tried to create a new territorial land system to separate the new federal government's territorial powers from the domestic powers by requiring States to be made out of our territorial lands. They also statutorily memorialized their intent of this new territorial land system in the Northwest Ordinance of 1787. Unfortunately, the slave holding States recognized that to preserve slavery they had to create domestic territorial war powers in the federal government.

Chief Justice Marshall, a slaveholder, deliberately used the "Indians" as the justification to continue the domestic territorial war powers in the federal government by creating a special trust relationship based on international law principles over the "Indians" in the case of *Worcester v. Georgia*, 31 U.S. 515 (1832). In 1857, Chief Justice Taney used *Worcester* without ever citing it in his *Dred Scott* opinion to deliberately intermix the legal status of Indian versus Negro rights to permanently preserve the federal domestic territorial war powers and make slavery constitutional. *Scott* at 541.

Ironically, the *Dred Scott* decision became the legal basis of the Reconstruction Acts and specific legislation that forced social changes on the defeated Southern States. USDOJ was created in 1870 at "the seat of Government," in part, to preserve these powers in the federal government. These territorial laws of USDOJ were confined to federal land, water and Indian issues until Richard Nixon expanded them to every part of the federal government.

President Nixon altered our whole constitutional system in 1970 by making the "Promotion of Tribal Sovereignty" a primary purpose of the national government. President Nixon knew through his research that he unleashed unlimited sovereign power in the Presidency by putting Chief Justice Marshall's special Indian trust relationship from *Worcester* ahead of the Constitution, expanding USDOJ's "hidden agenda."

Today, former President Trump is asking this Court to again confirm that these federal territorial war powers can be constitutionally applied domestically to confer absolute sovereign immunity on the President, just as if the President is the successor to all of the sovereign colonial powers of King George III.

I. CLAIMS OF ABSOLUTE PRESIDENTIAL SOVEREIGN IMMUNITY ARE BASED ON *WORCESTER v. GEORGIA'S* CREATION OF A "SPECIAL TRUST RELATIONSHIP" BETWEEN THE UNITED STATES AND INDIAN TRIBES WRONGFULLY APPLYING THE TERRITORIAL WAR POWERS OF INTERNATIONAL LAW WITHIN THE UNITED STATES

A. Because Slavery Legally Existed in the Colonies, Lord Mansfield's Solution to Prevent the Territorial War Powers of the King within England Could not be Directly Applied in the Nascent United States

English common law relies on many principles that were established before Columbus discovered the Americas. By keeping the English legal system as the basis for the laws of the United States, we inherited and built upon those principles. For purposes of this discussion on absolute sovereign immunity it must be understood that this principle had been rejected in England as a result of the English Civil War. Parliament demanded that King Charles I be bound by the laws of England. When Charles I refused, Parliament won the battlefield victories that forced Charles I to relinquish his sovereign claims to absolute sovereignty and absolute sovereign immunity. With Charles I's execution in 1649, no one was above the law within England, yet the King's international powers were undiminished.

The English legal system carefully separated domestic law, defined as the laws that applied within the boundaries of England, from international law,

defined as the territorial laws based upon the authority to wage war, including discovering new lands. This distinction in English law was a major reason why the Colonists could never attain the same rights as Englishman. We were an English territory until we won our independence.

England totally resolved the problem of whether to allow the King's territorial war powers to apply within her interior boundaries in the case of *Somerset v. Stewart* (1772) 87 ER 499, 509-510, by banning slavery as illegal within England. This same decision acknowledged the legality of slavery in the colony of Virginia. Lord Mansfield made the distinction between domestic and international law absolutely clear in his opinions in *Somerset* and *Campbell v. Hall*, (1774) 1 Cowp. 204, 209-210, by acknowledging the overriding authority of the King in the colonial territories. *See Johnson v. M'Intosh*, 21 U.S. 543, 594, 597-598 (1823) (citing *Campbell*); *Mitchel and Others v. the United States*, 34 U.S. 711, 748-749 (1835).

The Framers in the Constitution established the requirement that the territories of the United States had to be disposed and turned into States to prevent the territorial war powers from applying domestically. *See* Art. IV, Sec. 3, Cl.2. They attempted to achieve what Lord Mansfield accomplished in England without ending slavery. Many of the Framers believed that intermixing war and civil authorities to regulate slavery was acceptable because they had designed a national government that made permanent civil liberties and would require all "war or emergency" designations to be "temporary." They specifically applied this temporary versus permanent restriction in the Territory/Property Clause, Art. IV, Sec. 3, Cl. 2. The new land system was adopted in the Northwest

Ordinance. *See* Act of Aug. 7, 1789, 1 Stat. 51, n. (a) (reproducing the Ordinance of 1787 enacted by the Continental Congress). The Framers also learned from English experience that government ownership of real property created jurisdictional issues and deliberately created the separate Enclave Clause, Art. 1, Sec. 8, Cl. 17. Similarly, they understood from English law that government ownership also implicated commercial activities that touched upon or used government property and separated commerce from the ownership interests. These and other specific separation of power and checks and balances constraints were built into the Constitutional structure to prevent the territorial war powers from being used as domestic authority. The Framers thought they had created a limited national government subject to a written statement of its authorities. In a separate Bill of Rights they imposed even more limitations on the national government and specifically reserved to the States and the People all those powers not specifically conferred to the national government.

After independence, there was a fight over jurisdiction of Indians and Indian tribes that remained in the original Colonies that now were sovereign States. This was not a federalism dispute because Congress, as part of the compromise to enable the Louisiana Purchase, had passed a statute authorizing the President to negotiate the removal of any Indian tribe East of the Mississippi to the Western territories. The same statute conceded that those Indians and Indian Tribes that remained in the Eastern States were under State jurisdiction. *See* Act of March 26, 1804, § 15, 2 Stat. 289. Chief Justice Marshall partially limited the sovereign authority of the President in *Marbury v. Madison*, 5 U.S. 137 (1803). As the District of Columbia

panel in this case pointed out on p. 21 of its opinion, the political discretion of the sovereign "can never be examinable by the courts." Only the ministerial powers of the President are subject to indictment.

In the 1820's the Presidents began to vigorously pursue a removal policy of all Indians east of the Mississippi River. Congress passed the federal Removal Act of 1830, 4 Stat. 411, to define and enforce the removal policy agreed to in 1804. The Removal Act was specifically drafted to meet the obligations of the federal government to the States to remove the Indians, dispose of the "Indian title" to the lands they occupied, and fulfill their federal treaty interests on actual federal territory West of the Mississippi as required by the 1804 Louisiana Purchase statute so that state jurisdiction would no longer be impaired in the Eastern states.

Chief Justice Marshall disagreed with the Removal Act policy defined by Congress and tried to interfere with it by his ruling in *Worcester*. Congress responded by overruling *Worcester* by statute by passing the 1834 Indian Trade and Intercourse Act, 4 Stat. 729, deliberately ceding any federal protection for all Indian tribes and Indian land East of the Mississippi River once their lands were exchanged pursuant to the Removal Act, and defining that Indian country only existed West of the Mississippi River. This assimilation policy stayed in affect through all subsequent administrations into the Civil War.

The Lincoln Indian policy of assimilation limited the reach of "Indian country" in new lands that were across the Mississippi River. This policy was set forth in President Lincoln's annual addresses of December 1, 1862, and of December 8, 1863, and in the Removal Act of March 3, 1863, 37th Cong. Sess. III, Ch. 99, 12 Stat.

792-794 (attached to the Indian appropriations act). The Lincoln Indian assimilation policy was directed toward non-hostile tribes and expanded upon and further softened the harsh assimilation policy of the Removal Act of 1830, by focusing on **individual Indian bands within tribes and individual Indians.** The Lincoln Indian policy was intended to end the territorial war power over Indians that sets apart "Indian country" from State jurisdiction and to confer upon them full citizenship rights, including direct land ownership.

B. The Overriding Tribal Trust Relationship was intentionally created in *Worcester* to thwart Congress or any State from Prohibiting Slavery

In *U.S. v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936), this Court recognized that the right over Territories previously acquired "by discovery and occupation" is precisely the same "'full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do", that vested in the United States "[a]s a result of the separation from Great Britain." 299 U.S. at 316-318. The Doctrine of Discovery, based primarily on the Papal Bull 'Inter Caetera' issued by Pope Alexander VI on May 4, 1493, "gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession." *Johnson v. M'Intosh*, 21 U.S. 543, 573 (1823). Pursuant to King George III's Proclamation of October 7, 1763, "the crown reserved for its own dominion and protection, for the use of the

Indians, 'all the land and territories lying to the westward... Thus, "the policy of the Royal Proclamation was to demarcate an 'Indian country' within which trading could only be conducted with the approval of the Crown, and to establish that all grants of land from the Indians would be valid only with the approval of the sovereign." *Mohegan Tribe v. State of Connecticut*, 638 F.2d 612, 615 (2d. Cir. 1980).

The Confederation "Congress affirmed the prior policy of the Royal Proclamation of 1763...in the Resolve of 1783, 1 Laws U.S. 607-608...by establishing that all land transactions with the Indians would be invalid unless approved by the federal government, but it limited the effect of the Resolve to lands, 'without the limits or jurisdiction' of the states." *Mohegan Tribe*, 638 F.2d at 616. The Confederation Congress also later issued the Ordinance of 1787 covering the Northwest Territory, which continued to protect Indian lands and property from unconsented-to settlor acquisition, "unless in just and lawful wars authorized by Congress." Prior to *Worcester*, this Court adhered to the Framers' attempt to prevent the territorial war powers from applying within the boundaries of the sovereign States.

Chief Justice John Marshall, in *Worcester*, invoked this Court's general equity powers and cited the treatise of international law expert Emer de Vattel as grounds for drawing several conclusions. First, he concluded that Indian tribes or bands could be considered 'sovereign' nations able to enter into enforceable treaties with independent sovereigns so long as they retained one facet of sovereignty – political and administrative self-governance. Second, he concluded that unequal treaties and alliances could be entered into between the evolving United States

government and Indian tribes or bands not otherwise "acknowledged or treated as independent nations by the European governments." *See Worcester* 31 U.S. at 543-551, 581 (1832); *United States v. Rogers*, 45 U.S. 567, 572 (1846). Chief Justice Marshall construed indicia as evidencing the dependent and 'ward' status of said tribal nations in the eyes of the U.S. government as establishing a sort of domestic protectorate, 31 U.S. at 555-557, which served as the basis for creating a fictional "special tribal trust" relationship for their benefit. The opinion then says that "[t]he treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states, and provide that all intercourse with them shall be carried on exclusively by the government of the union." 31 U.S. at 557.

Chief Justice Marshall knew that in creating a "special trust relationship" with the Indians based upon international law as applied domestically in Georgia that he was preventing the *Somerset* decision from ever being applied in the United States without reversing *Worcester* and bringing on the political fight over slavery. This decision laid the groundwork for the Court's 1857 decisions in *Dred Scott* and *Fellows v. Blacksmith*, 60 U.S. 363, 371 (1857) to preserve the territorial war powers as domestic law to permanently save the institution of slavery. [3]

[3] CERF supports inherent tribal sovereignty because it poses no problem to our constitutional structure.

II. INSTEAD OF ENDING THE TERRITORIAL WAR POWERS APPLYING WITHIN THE UNITED STATES WHEN SLAVERY WAS BANNED THESE EXTRA-CONSTITUTIONAL POWERS WERE PRESERVED BY CREATINGTHE USDOJ AND THEN FULLY UNLEASHED BY PRESIDENT NIXON

A. Secretary of War Edwin Stanton Deliberately Preserved the Territorial War Powers in the Federal Government Following the Civil War.

The restraints on the Territory Clause that Chief Justice Taney obliterated to protect slavery in the *Dred Scott* decision became the main excuse for the federal government to use these same territorial war powers to "reconstruct" the Southern States that had seceded from the Union. President Lincoln argued strenuously against Secretary of War Edwin Stanton who vehemently wanted to punish the South. President Lincoln realized that to put the Constitution back together the territorial war powers had to be limited and not become a war spoil of the North. Lincoln tried to explain that the Southern States had never seceded in attempting to restore all of the safeguards that had protected the constitutional structure, including federalism, in place before the Civil War. Lincoln believed much should be forgiven when the Southern States accepted the end of slavery by ratifying the Thirteenth and the proposed Fourteenth Amendments. When President Lincoln was assassinated, Secretary Stanton became a virtual dictator, pushing his desire to Reconstruct the Southern States with the territorial war powers that England used against its colonies.

USDOJ, in its enabling legislation, was given the authority to define and use the war powers of the naval judge advocate general and solicitor of the War Department as general war powers. (emphasis added) *See* 16 Stat. 162, Ch. 150, Secs. 3, 6, June 22, 1870. These general war powers were given to an executive department as normal domestic law. Stanton won the Reconstruction fight with USDOJ.

The legislation of the 1871 Indian Policy contains specific details of what war powers can be used to enforce the specific goals of Congress in forcing all of the Indian tribes on to reservations and then prescribing how the reservations will be governed. The act creating USDOJ was expertly written by an attorney intimately familiar with how the territorial war powers work in application, and includes the powers of the War Department solicitors of the Army and Navy in two general sections, empowering the new department and office without any constraints. From 1872-1923, Congress also recognized the U.S. assistant attorney generals/solicitors for the U.S. Department of the Interior (DOI) which, upon its creation in 1849, had assumed all the powers previously exercised by the War Department Secretary over Indian affairs,[4] as having "exercised their functions under the supervision and control of the...Attorney General."[5] Unless carefully read, even a lawyer might not realize the major change in law contained in empowering federal attorneys to use unlimited territorial war powers in any

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[4] *See* 1 Rev. Stat. 441, Act of March 3, 1849, 30th Cong. Sess. II, Ch. 108, Sec. 5; The Secretary of the Interior, *Order No. 3335: Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries* (Aug. 20, 2014) at 6.

[5] *See* Congressional Directories (1872-1923) in Table of Authorities.

case brought before any kind of federal court. Unlike the very direct war powers applied in the federal Indian policy of 1871 by Congress, the grant of war powers in the enabling legislation of the USDOJ and Solicitor General appears inconsequential. There are no requirements for the USDOJ or Solicitor General to disclose when the territorial powers are being invoked.

The "hidden agenda" combines the inherent general war power statutory authority of the USDOJ with the authority to define and advocate for the special Indian trust relationship created in *Worcester v. Georgia*, with the war powers of the 1871 Indian policy. The USDOJ using this combination of authorities is able, without any specific legislation from Congress or any direction from the President, to exercise the full territorial war power authority of the British sovereign in the colonial territory, including the Proclamation of 1763. This Court, in deciding this case, could actually make the USDOJ more legally powerful than the President as Commander in Chief. The USDOJ is not politically accountable to any branch of our government with these combined authorities.

It seems obvious today that the newly created USDOJ was intended to be used to enforce the 1871 Indian policy and Reconstruction. It was not obvious to the press or our elected officials at the time. Within months of being created, USDOJ was already moving to attack the equal footing doctrine created in *Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845) by changing the jurisdiction of the Army Corps of Engineers over the Mississippi River. USDOJ has always treated the suppression of the States as one of its main purposes. This Court, in *United States v. Kagama*, 118 U.S. 375 (1886), made the territorial war powers "plenary," thereby allowing the national government to ignore all

constitutional limitations of separations of powers, checks and balances and federalism. This is the very same plenary power that still exists over the Indians today from the Indian policy of 1871.

Many people now see this Court as the enemy of the States and the People because of the Justice's perceived personal views. Both liberals and conservatives are aware that something is creating these extreme political positions that are dividing us. USDOJ is manipulating both sides with false arguments using its "hidden agenda." USDOJ appears to be willing to misconstrue any and all facts in cases before this Court to conform to its hidden agenda just as Veeder altered the historical facts in his memos. Counsel for CERF does not believe that this is just happening in the federal courts. USDOJ attorneys advise all members of Congress, the President, and represent every Department of the Executive Branch. Every time this Court, Congress, or the President expands the special tribal trust relationship it takes rights and liberties away from all of the People and expands the territorial powers of the federal government against the structure of the Constitution. CERF does not agree with all of the actions taken by President Trump on January 6, 2021, but we greatly appreciate his willingness to openly use these claimed unlimited powers to finally force the Nixon/USDOJ's hidden agenda into the open for all to see and confront.

B. The Nixon Indian Policy to Promote Tribal Rights and the Veeder memoranda.

Congress passed the major act championed by Senator Robert Kennedy to change the structure of our government to take full advantage of the Indian status

and use of the territorial war powers in Public Law 89-554, 89th Congress, Sess. 2, 80 Stat. 378-663, 613 (Sept. 6, 1966), "To Enact Title 5, United States Code, Government Organization and Employees, codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees." This law mainstreamed 43 U.S.C. §§ 1457 and 1458 that were directly copied from 1 Rev. Stat. § 441 and 1 Rev. Stat. § 442, Act of March 1, 1873, 42nd Cong., Sess. III, Ch. 217, the first provisions of the codified Indian policy of 1871.

Each Justice of this Court should take a look at sections 1457 and 1458 just to see how cleverly written it is. The law uses the Indian status and the unlimited territorial powers to equate the authority of the United States over states as the same as its authority over territories. Unlike the original version that only granted these powers to the Secretary of War and Secretary of the Interior in 1871, the 1966 version grants it to every cabinet level Secretary in the federal government. This same "hidden agenda" is applied repeatedly to change every section of the law what had been considered distinctions between state and federal authority. It is not surprising that Justice Rehnquist, an expert in war powers, tried to confront this very law by applying principles of federalism in *National League of Cities v. Usery*, 426 U.S. 833 (1976). General principles of constitutional law were no match for this extra constitutional territorial war power authority that had been deliberately preserved following the Civil War.

Richard Nixon had a goal and plan to forever change our government by using the status of the Indians, and he succeeded in getting this into law before he became President. The Nixon Indian Policy

was intended to go well beyond just harming Native Americans.

This *amici* brief will address only the first two of the Veeder memoranda CERF found in the Truman presidential library. President Truman believed that Congressman Richard Nixon presented a danger to our constitutional government. President Truman brought in an attorney just to monitor the activities of Richard Nixon. As President Truman was leaving office he made a request to his friends and staff to continue to watch Nixon and keep records of his endeavors. This has resulted in the Truman presidential library having original materials as to how tribal sovereignty was intentionally weaponized not only by President Nixon but also many of the specific documents that are USDOJ's internal justifications for applying the unlimited territorial powers domestically.

Both memoranda discussed below were written by Veeder after he was fired from his long standing USDOJ position sometime between 1965 and 1967. He was then appointed by President Johnson's administration as a special consultant to the DOI Solicitor's Office at the request of Senator Robert Kennedy, this special appointment was renewed by the Nixon administration with an office in the White House. Veeder was the main designer of the Nixon Indian policy according to the documents located by CERF. The Nixon Indian policy was announced with President Nixon's Special Message on Indian Affairs to Congress in July, 8 1970 and presented to Congress. These Veeder memos are the internal basis of that policy, and bluntly explain how USDOJ may use the special Indian trust relationship to attack every State derived right to private property and all individual rights while blatantly lying about historical facts to "benefit" their

tribal objectives.

The memorandum "Respecting Federal Trust Responsibilities For Managing Indian Forests..." dated September 19, 1968 explains how William H. Veeder interpreted the Indian trust relationship created by the *Worcester* Court to alter separation of powers principles. Attached to this Memorandum is his synopsis of the Indian Trust Responsibility. The second memorandum is a comprehensive explanation with points and authorities that is the legal basis of the Nixon Indian policy.[6] It is titled "Implementation of Memorandum Respecting American Indian Reservation Economic Development..." This 127-page memorandum dated May 14, 1969 explains how any physical thing that can be claimed for the Indians can be subjected to federal authority.

There are several major differences in the way Veeder interpreted the Indian trust relationship. Starting with the "Indian Trust Responsibility" document the first paragraph sets the new position. The initial assumption is that the Constitution creates an *in praesenti* covenant with the Indians that is perpetual. The second paragraph is titled "The trust has been and must be fulfilled by the three great branches of the government." It then explains that the trust is not a private trust but a government trust. The Executive authority for the fulfillment of the trust is said to be in the Secretary of the Interior who then is said to have broad discretionary power to meet the goals defined by this trust relationship. It ends with one paragraph applying these principles to the management of the Indian forests.

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[6] Both Veeder memoranda are available online. *See* Table of Authorities. <https://MilleLacsEqualRightsFoundation.org>

The second memorandum is even more disturbing. Veeder bases his view of the constitutional covenant with the Indians squarely on *Worcester, supra*, followed by *Kagama, supra*, stating that the covenant with the Indians is the supreme law of the land under these rulings. He then begins to explain how this is enforced through the Indian Commerce Clause incorporating elements from the Articles of Confederation into his interpretation. It then proceeds to explain how the Secretary of the Interior can exercise all of these constitutional powers based solely on his discretion to act on behalf of the Indians. He then claims that there is an enforceable standard of diligence that the tribes can enforce against the Secretary and government. [7]

This memorandum also concerns the enforcement of the Indian Trust Responsibility document. The main point of this memorandum is that a separate federal corporation like the Tennessee Valley

[7] William H. Veeder was born and raised in Montana on Indian reservations. His father worked for the Bureau of Indian Affairs. He graduated from the University of Montana for both his undergrad and law degrees. Montana has been much more affected by Veeder's pro-Tribal position than any other State. Montana is still declining to exercise civil and criminal jurisdiction over county polling precincts located on Indian reservations. In 2006, Jon Tester secured victory over Sen. Conrad Burns by a slim margin of just over 3,000 votes out of nearly 400,000 cast. Within the boundaries of the Crow Indian Reservation in Big Horn County, Montana, lie 11 voting precincts critical to the electoral process. During the hotly contested Senatorial race, eight county-assigned poll watchers and election judges filed notarized affidavits detailing instances of voter fraud and election crimes on the Crow Reservation. The election of Sen. Tester flipped the majority party in the Senate. This kind of electioneering could happen again in Montana this year.

Authority should be given the authority to exercise the constitutional covenant with the Indians to fully protect their property and rights. Such a corporation would have the authority to challenge ever private land title in the United States. Specifically, Veeder recommends: "Congress should enact legislation which would place in an agency independent from the Department of the Interior and the Department of Justice the full responsibility for the protection, preservation, administration, development, adjudication, determination, and control including but not limited to all legal services required in connection with them, of the lands and rights to the use of water of the American Indian Reservations in western United States." P.1 of memorandum. The prime objective of his study is to find a way to avoid the conflicting interests of Congress, the Executive, and personnel that prevent the full enforcement of the covenant with the Indians.

The memo transitions from respecting how the Indians view their own lands which should be respected and enforced against all to the argument that economic development of the reservations is to create a means of sustenance for the tribes for these rights. This argument for sustenance defines the term "trust property" as including the actual rivers, lakes and waterfronts as the source of sustenance for tribes using the resources of the waterways. Memo at p. 12. From here Veeder continues into how the federal reserved rights doctrine can be further expanded to include this right to sustenance by making the federally reserved water rights actual trust property belonging to the tribes. Memo at p. 21. Pages are spent on how this Court's decision in *Arizona v. California*, 373 U.S. 546 (1963) established the basis for the tribes having a perpetual ownership interest in all waters for their

sustenance. Going back to the broad trust established in *Worcester*, Veeder then argues that these federal reserved water rights and treaty rights are private and not public rights that must be administered as a priority. Memo at p.33. The memo continues by explaining how his definition of these private federally reserved water rights can be used to overcome riparian, prior appropriative, and ground water rights conferred under state law. This section ends with a direct attack at federal-state relations.

On p. 49 Veeder starts over this time rewriting early American history to comport to his view of the constitutional covenant between the national government and Indians. This rewrite omits the Louisiana Purchase act, both Indian removal acts, and many other acts making it appear that Congress never breached Veeder's version of the special trust relationship. This rewritten history is familiar because this is how the memorandum written for President Ford by Leonard Garment, entitled "What Level Tribal Sovereignty," begins. CERF found the sanitized version of the Veeder position in 2008 and has often cited it to this Court in previous *amicus* briefs.[8] The second memo ends with specific recommendations for managing Indian forests and how that standard is to the level of a private trustee.

By suppressing the information on Veeder and what he wrote for President Nixon, the Executive branch has created a true Madisonian faction of USDOJ attorneys promoting his expanded Indian special tribal trust concepts while not allowing the full constitutional

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[8] Memorandum, *The Native American: At What Level Sovereignty?*, James Spaith for Leonard Garment, The White House (Aug. 29, 1974). *See* Table of Authorities.

ramifications of his ideas to be disclosed. Veeder's version of the special trust relationship prevents persons who are Indians by race from ever becoming full citizens, identical to how the Negroes were classified in the *Dred Scott* decision in 1857. The Nixon Indian Policy was not intended to benefit the Indian people. It was intended to preserve these domestically applied territorial war powers in the federal government to avoid the limitations contained in the constitutional structure. The Obama and Biden administrations pursued the Veeder objectives on the waterways with the new "waters of the United States" definition in the Clean Water Act that was recently reinterpreted in *Sackett v. EPA*, 143 S.Ct. 1322 (2023). The USDOJ is still enforcing the Nixon Indian Policy to promote tribal sovereignty as Veeder outlined it today.[9]

[9] *See e.g.*, United States Department of the Interior Office of the Solicitor, *Memorandum – Reaffirmation of the United States' Unique Trust Relationship with Indian Tribes and Related Indian Law Principles*, M-37045 (Jan. 18, 2017).

III. IT IS TIME TO STOP THE TERRITORIAL WAR POWERS FROM BEING APPLICABLE WITHIN THE EXTERIOR BOUNDARIES OF THE UNITED STATES AND END ABSOLUTE FEDERAL SOVEREIGNTY

A. This Court in recent decisions has made great strides in limiting absolute federal sovereignty by making major changes to federal Indian law.

When the USDOJ advocated that a federal park service regulation outlawed the use of hovercraft on Alaskan waterways, preventing Mr. Sturgeon using his hovercraft contrary to the agreement between the National Park Service and the State of Alaska that Alaska had controlling jurisdiction on the waterways, this Court took the case. No legal justification was given for the jurisdictional change asserted by USDOJ in any court all the way to the oral argument before this Court. When the assistant Solicitor General said that she was not required to tell this Court where this power had come from, the reaction from the bench was astonishment, waking this Court up that there was something very wrong in USDOJ promoting tribal sovereignty over all other interests of the United States.

When the USDOJ ignored the jurisdictional ruling in *Sturgeon v. Frost I*, 577 U.S. 424 (2016) and forced the case back to this Court for enforcement of the ruling, this Court realized it had to go further than just saying what the law was supposed to be in order to enforce its decisions in Indian law. With *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486 (2022) this court started a pathway to confront the absolute

territorial power that is the basis for any claim to absolute presidential immunity.

Significantly, in *Castro-Huerta*, this Court rejected the view long ago espoused in *Worcester*, that Indian tribes and their reservations are racially "distinct nations." Instead, this Court held that "a reservation [and the Indian tribe(s) occupying it] was [were] in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law." *Id.* at 2502. Thus, the Court recognized that "Indian country" is part of a State. *Id.* at 2502-2503. The Court, in *Castro-Huerta*, also recognized that individual Indian tribes are **not** "foreign" sovereigns **and** that individual Indian tribal members are **not** members of a "distinct people" that cannot become part of the American people as discussed in *Dred Scott*.

Following its decision in *Castro-Huerta*, the Court issued four more decisions during its 2023 term impacting the Indian trust relationship and the territorial war powers that directly confront the continued existence of the Nixon/USDOJ "hidden agenda". Starting with *Sackett v. EPA*, that concluded that the assertion of federal jurisdiction over waterways does not include anything beyond what is required to keep a channel open under the Commerce powers. This decision literally rejects the waterways definition William Veeder argued for in the Nixon Indian policy and restores the jurisdictional analysis made in *Pollard's Lessee*, at 221, that created the equal footing doctrine.

In *Haaland v. Brackeen*, 143 S.Ct. 1609 (2023), the Supreme Court held that, although it has long "characterized Congress's power to legislate with respect to the Indian tribes as "'plenary and exclusive,'"

"'plenary' does not mean 'free-floating.' A power unmoored from the Constitution would lack both justification and limits." *Brackeen, Id.* at 1629 (citations omitted). The Court, in *Brackeen*, catalogued and then conceded how it had previously interpreted the Indian Commerce Clause, the Treaty Clause, the 1871 Indian policy, the federal-Indian trust relationship, and the national government's inherent pre-constitutional powers, in an "unwieldy" manner devoid of definitive identifiable bounds that "rarely tie[d] a challenged statute to a specific source of constitutional authority," "ma[d]e it difficult categorize cases and even harder to discern the limits on Congress's power." *Brackeen, Id.* at 1628-1629. The Court held, nevertheless, that "we have never wavered in our insistence that Congress's Indian affairs power 'is not absolute.'" *See, e.g., Delaware Tribal Business Comm. v. Weeks*, 430 U. S. 73, 84 (1977). The Court further emphasized that, "[i]t could not be otherwise – Article I gives Congress a series of enumerated powers, not a series of blank checks." *Brackeen, Id.* at 1629. And it defined the present-day Indian affairs "powers inherent in any Federal Government" as "'creating departments of Indian affairs, appointing Indian commissioners,' and...'securing and preserving the friendship of Indian Nations.'" " *Brackeen, Id.* at 1631. Thus, the Court "reiterate[d] that Congress's authority to legislate with respect to Indians is not unbounded. It is plenary within its sphere, but even a sizeable sphere has borders." *Brackeen, Id.* at 1629-1630. Hence, the Court agreed with the observation Justice Alito made in his concurring opinion, that "**plenary powers cannot override foundational constitutional constraints.**" (emphasis added). *Brackeen*, Id. at 1629, n.3. Most importantly, in *Brackeen* the Court finally concluded

that in disputes involving Indian children in state courts, the parties are entitled to raise the protections of the Fourteenth Amendment Equal Protection Clause. *Id.* at 1638, 1640, n. 10.

This was followed by the consolidated cases of *United States v. Navajo Nation* and *Arizona v. Navajo Nation*, 143 S.Ct. 1804 (2023), in which this Court rejected *Worcester's* view of the existence of a special fiduciary relationship between the federal government and all federally recognized Indian tribes. Notably, the United States brief in *Navajo Nation*, expressly confirmed the establishment of only a general trust relationship with Indian tribes, and it expressly disavows the existence of a "special relationship" with Indian tribes. It states that, although "[t]he United States has a general trust relationship within Indian tribes[,...] the existence of that general relationship does not itself establish any judicially enforceable duties against the United States. *See* Federal Parties Brief at 17.

In Students for Fair Admissions, Inc. v. Harvard, 143 S.Ct. 2141 (2023) this Court rejected all forms of "all governmentally imposed discrimination based on race" which "were undone...by the transformative promise 'stemming from our American ideal of fairness': "the Constitution...forbids ...discrimination by the General Government, or by the States, against any citizen because of his race." *Id.* at 2161. It held that, "'[a]t the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not simply components of a racial, religious, sexual or national class.'" (citations omitted). *Id.* at 2172. This Court explained that "[a]ny exception to the Constitution's demand for equal protection must

survive a daunting two-step examination known...as 'strict scrutiny.'" *Students for Fair Admissions*, (citing *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995)). Under that standard, [a court must] ask, first, whether the racial classification is used to 'further compelling governmental interests.'...Second, if so, [the court must] ask whether the government's use of race is 'narrowly tailored' – meaning 'necessary' – to achieve that interest." *Id.* at 2162. Significantly, the Court reaffirmed its prior "reject[ion] of the notion that...past...societal discrimination constituted a compelling interest...Such...amorphous concept of injury...cannot 'justify a [racial] classification that imposes disadvantages upon persons...who bear no responsibility for whatever harm the beneficiaries of the [discrimination] are thought to have suffered.'" *Id.* at 2173. "In other words, '[r]acial classifications are simply too pernicious to permit any but the most exacting connection between justification and classification.'" (citations omitted) (Thomas, J. concur. op.) *Id.* at 2177.

With these new cases expanding the reach of Section One of the Fourteenth Amendment, this Court is just one step away from permanently destroying the USDOJ "hidden agenda" by declaring that the government of the United States does not have the sovereign prerogative to apply the territorial war powers to racially discriminate or classify any persons as being anything but equal before the law within the exterior boundaries of the United States. If the federal government does not have absolute sovereignty, then neither Congress, the President, or this Court can have absolute sovereign immunity.

B. To Prevent the Rise of Tyranny This Court Should Declare that the Federal Government's Exercise of Domestic Territorial War Powers Within the United States Should Have Ended Following the Civil War.

This argument is intended to mirror what Lord Mansfield accomplished in England by declaring that slavery was unconstitutional on the lands within England in 1772-1774. The Court should heed the admonition of Alexander Hamilton in *The Federalist No. 69* at 337-338, who "stresses that the President must be unlike the 'king of Great Britain,' who was 'sacred and inviolable.'" Because of the way our remaining federal lands are defined by statute, 43 U.S.C. § 1701(a), the "Law of the Land" argument made and enforced by Lord Mansfield to prevent the territorial war powers of the British King from applying domestically within the physical lands of Great Britain will not work here as the USDOJ has now proven for 160 years. To enforce the checks and balances and separation of powers constraints of the Constitution and give the national government back to the People, we must use a fundamental legal and political principle, Equal Protection of the Law as stated in Section One of the Fourteenth Amendment, in combination with the fundamental principles of federalism. Making Equal Protection of the Laws apply absolutely within the territorial boundaries of the United States, no matter how the land status is defined by statute, will allow this Court to do what Lord Mansfield did to enforce constitutional limitations on

the British monarchy within England that our colonists were denied.[10]

The four new decisions cited above greatly expand on *Adarand Constructors, Inc.* 515 U.S. at 215, 217-218, where this Court held that, although the Fifth Amendment does not expressly contain an express guarantee of equal protection, it contains an implicit guarantee of equal protection by incorporating the more explicit Equal Protection Clause of the Fourteenth Amendment via the doctrine of reverse incorporation. Most importantly, the four new decisions directly counter the arguments made by Veeder that USDOJ has relied on to maintain that the territorial war powers can be applied to the People and States within the exterior boundaries of the United States. *Sackett* took out the unlimited federal jurisdiction over water. *Navajo Nation* effectively applied *Castro-Huerta* and redefined the Indian trust overruling *Worcester* and placing the Indian trust relationship within the constitutional and not international powers of the United States. *Brackeen* extended the Fourteenth Amendment into federal Indian law. And finally, *Students for Fair Admissions* extended the application of Section One of the Fourteenth Amendment against the authority of Congress to maintain or use racial preferences limiting its sovereign

[10] *See United States v. Vaello Madero*, 142 S.Ct. 1539, 1541 (2022) (declaring that the five territories of the United States: American Samoa, Guam, Northern Mariana Islands, the U.S. Virgin Islands and Puerto Rico are the only lands subject today to the territorial powers of the United States under the Territory Clause, Art. IV, Sec. 3, Cl. 2, would be the complimentary action to extending the application of the Fourteenth Amendment).

prerogative authority under Section Five of the Fourteenth Amendment.

This Court is positioned to make the ruling to limit the sovereignty of the United States government to the boundaries of the Constitution within the exterior boundaries of the United States to protect the liberty and rights of all of the American People. This Court can find that all branches of the federal government are subject to the Constitution and the laws they have passed as required to enforce the fundamental principle of equal protection of the law. Application of the Fourteenth Amendment will stop USDOJ from using the special Indian trust relationship to supersede the Constitution against all of the People.

The best part of this kind of a ruling is that it is not about Petitioner or USDOJ. It becomes a ruling about who We the People choose to be. And we choose equal rights for all. That means no President, member of Congress, or federal judge will ever be above the law to claim absolute sovereign immunity.

CONCLUSION

For all the aforementioned reasons, this Court should affirm the ruling of the District of Columbia Circuit Court of Appeals.

Respectfully submitted,

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