

SOTOMAYOR, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 16–498

DAVID PATCHAK, PETITIONER *v.* RYAN ZINKE,
SECRETARY OF THE INTERIOR, ET AL.

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

[February 27, 2018]

JUSTICE SOTOMAYOR, concurring in the judgment.

I agree with the dissent that Congress may not achieve through jurisdiction stripping what it cannot permissibly achieve outright, namely, directing entry of judgment for a particular party. I also agree that an Act that merely deprives federal courts of jurisdiction over a single proceeding is not enough to be considered a change in the law and that any statute that portends to do so should be viewed with great skepticism. See *post*, at 11–12 (opinion of ROBERTS, C. J.). I differ with the dissent’s ultimate conclusion only because, as JUSTICE GINSBURG explains, the Gun Lake Trust Land Reaffirmation Act (Gun Lake Act), Pub. L. 113–179, 128 Stat. 1913, should not be read to strip the federal courts of jurisdiction but rather to restore the Federal Government’s sovereign immunity. See *ante*, at 1–2 (opinion concurring in judgment).

In the Court’s first decision in this case, *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U. S. 209 (2012), the sole issue of disagreement between the majority and the dissent was whether the United States had waived its sovereign immunity from Patchak’s lawsuit. The majority held that Congress had done so in the Administrative Procedure Act, 5 U. S. C. §702, see 567 U. S., at 215–224, whereas the dissent concluded it had not because the case fell within the excep-

SOTOMAYOR, J., concurring in judgment

tions to the Government’s waiver of sovereign immunity under the Quiet Title Act, 28 U. S. C. §2409a(a), that apply when trust or restricted Indian lands are at issue, see 567 U. S., at 228–238 (opinion of SOTOMAYOR, J.). The majority recognized, however, that Congress was free to reinstate the Government’s sovereign immunity from suits like Patchak’s, observing that “[p]erhaps Congress would—perhaps Congress should” bar “the full range of lawsuits pertaining to the Government’s ownership of land,” regardless of whether the plaintiff claims ownership. *Id.*, at 224. Not long after, Congress enacted the Gun Lake Act.

In addition to the reasons set forth by JUSTICE GINSBURG, *ante*, at 2, given this context, §2(b) of the Gun Lake Act is most naturally read as having restored the Federal Government’s sovereign immunity from Patchak’s suit challenging the trust status of the Bradley Property. That conclusion avoids the separation-of-powers concerns raised here about jurisdiction stripping. On this basis alone, I would affirm the judgment of the Court of Appeals.