

GINSBURG, J., concurring in judgment

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## SUPREME COURT OF THE UNITED STATES

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No. 10–382

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UNITED STATES, PETITIONER *v.* JICARILLA  
APACHE NATION

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

[June 13, 2011]

JUSTICE GINSBURG, with whom JUSTICE BREYER joins,  
concurring in the judgment.

I agree with the Court that the Government is not an ordinary trustee. See *ante*, at 17–19. Unlike a private trustee, the Government has its own “distinct interest” in the faithful carrying out of the laws governing the conduct of tribal affairs. *Heckman v. United States*, 224 U. S. 413, 437 (1912). This unique “national interest,” *ibid.*, obligates Government attorneys, in rendering advice, to make their own “independent evaluation of the law and facts” in an effort “to arrive at a single position of the United States,” App. to Pet. for Cert. 124a (Letter from Attorney General Griffin B. Bell to Secretary of the Interior Cecil D. Andrus (May 31, 1979)). “For that reason,” as the Court explains, “the Government seeks legal advice in a ‘personal’ rather than a fiduciary capacity.” *Ante*, at 18. The attorney-client privilege thus protects the Government’s communications with its attorneys from disclosure.

Going beyond attorney-client communications, the Court holds that the Government “assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute.” *Ante*, at 14. The Court there-

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fore concludes that the trust relationship described by 25 U. S. C. §162a does not include the usual “common-law disclosure obligations.” *Ante*, at 21. Because it is unnecessary to decide what information *other than* attorney-client communications the Government may withhold from the beneficiaries of tribal trusts, I concur only in the Court’s judgment.