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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH HOLLEY INDIVIDUALLY AND ON BEHALF OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA as Tribal Council Chairman,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS; and Bryan Mercier, as Acting Director of the Bureau of Indian Affairs,

Defendants.

Case No. 2:24-cv-01629

Federal Defendants' Combined Opposition to Plaintiff's Emergency Motion to Stay and Emergency Motion for Preliminary Injunction, and Motion to Stay the Instant Proceedings

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Exhibit	Description
A	Declaration of Peter Wakeland
B	Director's Decision
C	Notice to Parties re: Status of Appeals of Director's Decision
D	Regional Director's Decision
E	IBIA Order Consolidating and Referring Appeals to the AS-IA
F	Declaration of Jocelyn Beard
G	Regional Director's Letter to Sandven for Garcia
H	Regional Director's Letter to Quintana

Federal Defendants, U.S. Department of the Interior ("Interior"), Bureau of Indian Affairs ("BIA"), and Bryan Mercier, in his official capacity as Acting Director of the BIA ("Director")[1] (collectively, "Federal Defendants"), respectfully submit this combined opposition to Plaintiff Joseph Holley's Emergency Motion to Stay Undated Decision from Director of the Bureau of Indian Affairs or, Alternatively, Emergency Motion for Preliminary Relief ("Motions"), and Motion to Stay the Instant Proceedings. ECF Nos. 10, 13.[2]

I. INTRODUCTION

This Court should deny Holley's motions. Holley is not likely to succeed on the merits of his claims because, among other reasons, he failed to exhaust administrative remedies. Holley also has not shown he will suffer any irreparable harm absent preliminary relief. Among other reasons, he could challenge any election results in tribal court. Finally, Holley has not shown that the balance of equities or public interest weigh in his favor. Rather than preserve the current status quo of having one group recognized by the BIA for purposes of conducting a tribal election, Holley's motions seek to have a federal court decide for itself the Tribe's proper leadership. This would serve to sow further confusion on the Tribe as it is undertaking a needed leadership election. And this Court lacks authority to provide such relief.

Holley, individually and purportedly on behalf of the Te-Moak Tribe of Western Shoshone Indians of Nevada ("Tribe"), filed the instant Complaint seeking this Court's review and reversal of a tribal leadership recognition decision issued by the Director on June 20, 2024 ("Director's Decision").[3] Compl., ECF No. 1 at 1; *see also* Director's Decision (attached as Ex. B). Holley specifically challenges the Director's recognition of a specific group of Tribal members, designated as the "Garcia-Ike Council," for the limited purposes of conducting business with the federal government and preparing for the next Tribal election cycle. Compl.

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[1] Bryan Mercier was appointed to replace Darryl LaCounte as Director of the BIA. Decl. of Peter Wakeland ¶ 26 (attached as Ex. A). The successor of a public official who is a party to an action is automatically substituted as a party if the named official no longer holds office while the action is pending. Fed. R. Civ. P. 25(d).

[2] Holley filed a combined motion and, pursuant to this Court's local rules, filed the motion twice, meaning ECF Nos. 10 and 13 are duplicates of each other. The citations in this brief to Holley's motion therefore apply to either filing.

[3] The June 20, 2024, decision was issued without a date. Upon notification of that fact, the Director re-issued the decision, with date, on July 18, 2024. Wakeland Decl. ¶ 15.

¶ 1; Ex. A at 1–2. Holley alleges that the Director's Decision exceeded the Director's review authority and violated the Tribe's constitution and sovereignty. Compl. ¶¶ 70–84. Pursuant to 25 C.F.R. § 2.714, the Director's Decision was effective upon issuance. Holley asks this Court to (1) find the Director's Decision unlawful and (2) reverse, stay, and enjoin enforcement of the Director's Decision. Compl. ¶¶ 70–91; *see also id.*, Prayer for Relief ¶¶ 1–5.

However, Holley is also one of five parties in two related consolidated administrative appeals directly or indirectly involving the Director's Decision presently before the Assistant Secretary-Indian Affairs ("AS-IA"). *See* Notice to Parties re: Status of Appeals of Director's Decision at 1 (Sept. 16, 2024) (attached as Ex. C). As with respect to administrative appeals of the Director's Decision, Holley filed his administrative appeal (along with several other people or entities) to the Interior Board of Indian Appeals ("IBIA") on July 25, 2024, and on September 3rd the AS-IA assumed jurisdiction over those appeals. *Id.* at 1.[4] On September 4th, Holley filed the instant Complaint appealing the Decision to this Court. Compl. The IBIA's regulations provide that "[w]hen an agency decision is effective pursuant to paragraph (c) of [25 C.F.R. § 2.300] or § 2.714, the administrative appeal will proceed unless an interested party challenges the agency decision in Federal court." Ex. C at 2 (citing 25 C.F.R. §§ 2.300, 2.714). On September 16th, the AS-IA issued a notice informing the parties to the consolidated appeal of the Director's Decision that, due to the language in the regulations, the AS-IA could not administratively adjudicate the consolidated appeals until Holley's instant case before this Court is either judicially adjudicated or stayed. *See id.*

To conserve judicial resources, and to allow the consolidated administrative appeal to resume, Federal Defendants request that, after ruling on the pending motions for emergency relief, this Court stay this case pending the earlier of two events: (1) a dismissal of Holley from the administrative appeals; or (2) the completion of the administrative proceedings before the AS-IA. Such a stay would not result in damage, hardship, or inequity to Holley (as he alleges), and would support an orderly course of justice in how Holley's cases proceed. For sake of

[4] The AS-IA also has before it consolidated appeals of a related July 10, 2024 Regional Director's decision regarding the Tribe's CFR Courts. *See infra* Section III.

clarity, Federal Defendants also request that, when staying this case, this Court directs the consolidated administrative appeals to proceed before the AS-IA while the stay is in effect.

II. LEGAL FRAMEWORK

A. Principles of Tribal Sovereignty

Indian tribes retain their inherent sovereignty, including "the power to make their own substantive law in internal matters and to enforce that law in their own forums." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978). Though Congress has given Interior authority to conduct elections to adopt or amend tribal constitutions under the Indian Reorganization Act, 25 U.S.C. § 5123, *see Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt*, 107 F.3d 667, 669 (8th Cir. 1997), Interior generally lacks any role in the calling or conduction of tribal government elections under tribal law, *see Wheeler v. U.S. Dep't of Interior, Bureau of Indian Affs.*, 811 F.2d 549 (10th Cir. 1987).

Tribal decisions about governance are generally not subject to review by federal courts. *See Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian Affs.*, 439 F.3d 832, 835 (8th Cir. 2006) (governance). But Interior must sometimes determine which of two or more competing tribal leadership groups it will recognize as the proper representative of a tribe to maintain the United States' government-to-government relationship with the tribe until the tribe resolves the internal dispute. *See, e.g.*, *Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983). Interior only makes such a determination when a federal action is required. *See id.* at 338–39. Such determinations have been reviewed as agency actions under the Administrative Procedure Act ("APA"). *Doucette v. U.S. Dep't of Interior*, 849 Fed. App'x 653, 655 (9th Cir. 2021); *Goodface*, 708 F.2d at 338.

B. Regulatory Framework for Appeals of BIA Decisions on Tribal Recognition

BIA Regional Directors can recognize or decline to recognize a Tribal representative. *See generally* 25 C.F.R. § 2.700. Recent revisions to Interior's administrative appeals regulations, 25 C.F.R. Part 2, went into effect on September 8, 2023. 88 Fed. Reg. 53,779 (Aug. 9, 2023). The revised regulations charge the Director with responsibility for administrative review of tribal government recognition decisions initially issued by BIA

Regional Directors. 25 C.F.R. § 2.702. Decisions issued by the Director are immediately effective but are not necessarily a final decision from Interior because they can be further appealed within Interior. *Id.* § 2.714. Therefore, any participant may administratively appeal a Director decision to the IBIA as provided for in 25 C.F.R. Part 2 or pursue judicial review in Federal court. *Id.*; *see also id.* § 2.300(b). Notwithstanding any other regulation, a Director's Tribal representative recognition decision must remain in effect and binding on Interior unless the reviewing official's decision is reversed by superior agency authority or reversed or stayed by order of a Federal court. *Id.* § 2.714. The AS-IA may assume jurisdiction over an appeal to the IBIA. 25 C.F.R. § 2.508; *see also id.* §§ 2.510–11; 43 C.F.R. § 4.332.

III. FACTUAL BACKGROUND

The Tribe's Constitution requires elections to be conducted every three years. Art. 7, Section 1; Pl.'s Mot., Ex. 6, ECF No. 14-6. The Tribe's Election Ordinance provides that elections are held in the second week of October. Election Ordinance Section 13-4-2(a)(1); Pl.'s Mot., Ex. 7, ECF No. 14-7. The Tribe has been embroiled in an internal dispute over the membership of its Tribal Council and the nature and make up of its Tribal judiciary since the last Tribal election cycle in October 2021. Compl. ¶¶ 24–38; Director's Decision at 1; Ex. A ¶ 5. Since the 2021 election, there have been two purported Tribal Councils claiming authority over the Tribe. *See* Compl. ¶¶ 24–38; Director's Decision at 1. Holley is the purported chairmen of one of those Tribal Councils, known as the "Holley Council," and the other Tribal Council is known as the "Garcia-Ike Council." *See* Compl. ¶¶ 2–3. Along with the competing tribal councils, at least two individuals claim to be tribal court judges. Director's Decision at 5. This has undermined the BIA's abilities to rely on tribal forums to recognize any group as the Tribal Council. *Id*.

On March 2, 2022, the Regional Director of the Western Regional Office of the Bureau of Indian Affairs ("Regional Director") issued a decision, updated on March 17, 2022, recognizing the Holley Council as the last validly elected Tribal Council, but only on an interim basis and for the limited purpose of finalizing transfer of judicial services from the BIA's Court of Indian Offenses ("CFR Courts"). Ex. A ¶ 7; Regional Director's Decision at 1–2 (Oct. 17,

2023) (attached as Ex. D). The decision stated that it was not a general letter of recognition nor did it mean to finally resolve the intratribal dispute following the October 2021 tribal election cycle. Ex. A ¶ 7; Regional Director's Ltr. to Sandven for Garcia at 2 (attached as Ex. G). This very limited interim recognition ended once the tribal court was identified. *See* Ex. G at 1–2 ("It is reiterated that our interim recognition of [the Holley] Council was strictly for the limited purpose of transferring judicial jurisdiction from the CFR Court to the Tribe."); *see also* Pl.'s Mot. at 9 (recognizing the transfer of judicial jurisdiction to the Tribe). Six months later, the Regional Director stated: "At this time, we do not recognize the last undisputed council as the tribal governing body as we are not recognizing any tribal government, pending tribal resolution of these issues." Ex. G at 2.

Finding that there was no federal need to identify who represented the Tribe, the Regional Director did not address the intratribal dispute until October 17, 2023, when the Regional Director issued a decision recognizing Danena Ike, a member of the Garcia-Ike Council, as the individual Tribal representative through whom the BIA would maintain government-to-government relations with the Tribe on an interim basis. Ex. A ¶ 8; *see also* Regional Director's Decision at 12 ("[I]n order to approve the leases, BIA *must* determine who may consent to the lease on behalf of the Tribe." (emphasis added)); Director's Decision at 1. The "recognition [was] required to allow the United States to continue necessary government-to-government relations with the Tribe" and "[was] not to be construed a general recognition for all Tribal purposes." Regional Director's Decision at 12. Three parties appealed the Regional Director's decision to the Director. Director's Decision at 10. Importantly for this Court's consideration of Holley's present motions, Holley did not appeal the Regional Director's decision, despite it being directly adverse to his interests. *Id.*

On June 20, 2024, the Director issued an order vacating the Regional Director's decision recognizing Danena Ika as interim Tribal representative, and instead recognized the Garcia-Ike Council as the Tribe's government for the limited purpose of conducting business with the federal government and for preparing for the next election cycle. Director's Decision at 1–2, 17–20. Four parties, including Holley, filed administrative appeals of the Director's Decision to

the IBIA. IBIA Order Consolidating and Referring Appeals to the AS-IA at 3 (Sept. 9, 2024). (attached as Ex. E). Holley filed an administrative appeal to the IBIA, *see id.* at 1, despite not having appealed the Regional Director's decision to the Director, *see* Director's Decision at 10. After filing an administrative appeal of the Director's Decision, Holley filed his complaint in this Court on September 4, 2024, seeking review of the Director's Decision. *See* Compl.

On September 3, 2024, while the consolidated appeals were pending before the IBIA, the AS-IA assumed jurisdiction over the administrative appeals of the Director's Decision. Ex. E at 3; Ex. C at 1. But because Holley, a party to the consolidated appeals, filed a challenge to the Director's Decision in federal court, the AS-IA concluded that he could not proceed with the administrative adjudication of the consolidated appeals of the Director's Decision pending resolution of this action before this Court. 25 C.F.R. § 2.300(b); *see also* Ex. C at 2.

Relatedly, the Regional Director issued another decision on July 10, 2024, concluding that "the [CFR Court] for the Western Region will once again exercise jurisdiction over criminal and civil cases on behalf of the [Tribe] unless and until the Tribe validly re-establishes a Tribal Court." Ex. E at 1. The Regional Director issued her decision restoring the CFR Court because, given the Director's Decision, neither of the two purported Tribal court judges had been validly appointed. *Id.* at 2. Five parties, including Holley, appealed the Regional Director's July 10, 2024 decision to the IBIA. *Id.* at 2. The IBIA noted "the interrelatedness of the appeals of the Regional Director's decision to the appeals from the Director's [D]ecision over which the [AS-IA] has assumed jurisdiction." *Id.* at 4. Therefore, the IBIA determined that "the[] five appeals should be consolidated and referred to the [AS-IA] for consideration in connection with the four appeals of the Director's [D]ecision over which he assumed jurisdiction. *Id.* at 6. Holley's Complaint does not raise a claim against the Regional Director's CFR Court decision. *See generally* Compl.

IV. LEGAL STANDARDS

A. Preliminary Injunction Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that

the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge." *Roman v. Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). Injunctions are extraordinary and drastic remedies that should be granted only if the movant meets the burden of persuasion by a clear showing. *See Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021); *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). Furthermore, mandatory injunctions that attempt to alter the status quo are particularly disfavored and should be issued only if extreme or very serious damage will result from failing to act; they are not issued where aspects of the case are unclear or in doubt. *See Am. Freedom Def. Initiative v. King Cnty.*, 796 F.3d 1165, 1173 (9th Cir. 2015); *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979).

Holley seeks either a stay of the challenged Decision or an injunction enjoining reliance on the Decision. Pl.'s Mot. at 25. The APA permits a court reviewing agency action to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. The standard for seeking such a stay is the same as the standard for seeking a preliminary injunction. *See Nken v. Holder*, 556 U.S. 418, 433–34 (2009). However, while the standards under Rule 65 and Section 705 are the same, Section 705 does not provide Holley with the form of relief he seeks here. Section 705 is intended to "*postpone* the effective date of an agency action" or "preserve status." 5 U.S.C. § 705 (emphasis added). That plain language signifies that a stay should be sought before the challenged action is implemented. Here, under 25 C.F.R. § 2.714, the Director's Decision became effective immediately. Thus, Holley is not merely seeking to preserve the status quo by staying the effective date of an agency rule or action. *See Monstanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 166 (2010) (reversing stay of agency decision to deregulate genetically engineered crop). Instead, he seeks to upend the status quo.

B. Stay of Proceedings Standard

A district court has the inherent power to stay proceedings in its own court. *Lockyer v. Mirant Corps.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936)); *see also Mediterranean Enter., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1979) ("The trial court possesses the inherent power to control its own docket and calendar."); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). "A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court." *Mediterranean Enter.*, 708 F.2d at 1465.

In deciding whether to grant a stay, courts should consider "the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *Lockyer*, 398 F.3d at 1110 (quoting *CMAX*, 300 F.2d at 268). Courts should also consider "the judicial resources that would be saved by avoiding duplicative litigation." *Pate v. DePuy Orthopaedics, Inc.*, No. 2:12-cv-01168, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012).

V. ARGUMENT

Holly has not met his burden of showing that he is entitled to a stay or preliminary injunctive relief. Therefore, this Court should deny his Motions. In addition, Federal Defendants ask that, after the resolution of the pending emergency motions, this Court stay this litigation pending the AS-IA's resolution of the consolidated administrative appeals. In light of the circumstances of this case, a stay will result in the underlying issues being simplified or mooted by the AS-IA adjudication of the consolidated appeals and it will not result in any hardship or inequity to Holley.

A. The Court should deny Holley's motions for a stay of the Director's Decision and preliminary injunction enjoining the Director's Decision.

1. Holley's requested injunction seeks relief that is largely outside of federal court jurisdiction.

To begin, much, if not all of Holley's motions should be denied because the motions request relief that would require this Court to interpret tribal law to resolve disputes that are solely a matter of tribal law, and which federal courts have no jurisdiction to resolve, let alone in the context of preliminary injunctive relief. *See, e.g.*, *U.S. Bancorp v. Ike*, 171 F. Supp. 2d 1122, 1125 (D. Nev. 2001) (finding that the court did not have jurisdiction to determine which Te-Moak faction constituted the governing body of the Tribe because that was a question involving a tribal election dispute, which is solely a matter of tribal law).

This Court ordered Holley to file a proposed order for his Motions, which clearly lays out the requested relief that is beyond this Court's jurisdiction. *See* ECF No. 20.[5] The proposed order first requests that:

> The Director's Decision is **STAYED** pending further order of the Court. The Tribe shall return to the status quo as to Tribal operations, conducting business with the federal government, and preparing and conducting the 2024 Tribal elections, as it existed prior to the undated Decision from the Director issued on or about June 26, 2024.

Id. at 20. Holley's proposed order then requests that:

> The Court also hereby **ENJOINS** any reliance upon, or enforcement of, the Director's Decision pending further Order of the Court. This includes, but is not limited to, disrupting the Tribal elections scheduled for Oct 8, 2024, in any way, or any effort of the "Garcia-Ike Council" or individuals working in concert with them, including but not limited to Steven McDade, to further or conduct any election in competition or contravention of the October 8, 2024, Tribal elections, and related dates, as set by the Tribe by and through the "Holley Council."

Id. Finally, Holley's proposed order requests that:

> The Court further **STAYS** and **ENJOINS** the "Garcia-Ike Council," its four members, Deanna Ike, Rhonda Hicks, Helen Stevens, and Leah Brady, and any individuals working with or in concert with them (including, but not limited to, Steve McDade) from exercising or attempting to exercise Tribal governance authority or functions over the assets or operations of the Te-Moak Tribe, pending further order of this Court.

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[5] Holley's proposed order would also have this Court grant *both* a stay and a preliminary injunction, *see* ECF No. 20 at 20, despite that Holley's motions seek a stay or, *in the alternative*, a preliminary injunction, *see* Pl.'s Mot. at 25.

Id. Holley largely seeks, through federal district court, to prohibit the Garcia-Ike Council from preparing the upcoming elections and empower himself to exercise that authority instead. Pl.'s Mot. at 24. His chief complaint appears to be that the Director's Decision is "being weaponized by the few remaining members of the 'Garcia-Ike Council.'" *Id.* at 2–3. Holley believes that a stay or injunction of the Director's Decision will allow the Holley Council to be the recognized Tribal government responsible for completing the upcoming Tribal elections. *See id.* at 24 ("A stay or injunction will clear the path for the Tribe, through the 'Holley Council,' to move forward with peacefully completing the 2024 Band elections, Tribal Council appointments, and the Tribal Chairman election. This is all Plaintiffs are seeking."). As addressed below, *see infra* Section V.A.3, Holley's belief that a stay of the Direction's Decision would revert Holley to the role of tribal leader is not correct.

More importantly, however, the proposed injunctive relief requires this Court to interpret tribal law to resolve an intratribal leadership dispute—a form of relief that federal courts cannot provide. *See, e.g.*, *Cayuga Nation v. Tanner*, 824 F.3d 321, 327 (2d Cir. 2016) ("[F]ederal courts lack authority to resolve internal disputes about tribal law" as "[i]t is 'a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself.'"); *Miccosukee Tribe of Indians of Fla. v. Cypress*, 814 F.3d 1202, 1208 (11th Cir. 2015) (citing *Montana v. United States,* 450 U.S. 544, 564 (1981)).

Holley's emergency motions invite this Court to get involved with an intratribal leadership dispute by opining on tribal law regarding leadership in the absence of an election and, in the process, affirming Holley's interpretation of that law and his belief that he should be serving in a leadership capacity. This would be improper. Federal courts lack jurisdiction to determine which group is the government body of the tribe because these types of intratribal disputes are solely a matter of tribal law and are far outside this Court's jurisdiction. *See, e.g.*, *Goodface*, 708 F.2d at 339 ("Although it was necessary to remedy the situation by ordering the BIA to recognize one governing body, the district court overstepped the boundaries of its jurisdiction in interpreting the tribal constitution and bylaws and addressing the merits of the election dispute."); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996) (finding federal courts

do not possess jurisdiction over intra-tribal disputes); *Kaw Nation ex rel. McCauley v. Lujan*, 378 F.3d 1139, 1143 (10th Cir. 2004) (same). What is more, Holley asks this Court to enjoin the Garcia-Ike Council, none of whose members are parties in this case. This Court should reject Holley's invitation to get involved in the Tribe's intratribal dispute.

2. Holley is not likely to succeed on the merits.

The most important element for preliminary injunctive relief is a likelihood of success on the merits, *see Fraihat*, 16 F.4th at 635, and the court may terminate the inquiry if the moving party fails to prove that element. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2021). A plaintiff "must establish that he is *likely* to succeed on the merits." *Winter*, 555 U.S. at 20 (emphasis added). Alternatively, "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction" if the remaining requirements are also satisfied. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).[6]

Judicial review of agency decisions like the Director's Decision is governed by the APA, 5 U.S.C. §§ 701–706. Final agency action is reviewed under 5 U.S.C. § 706(2). *Ctr. for Biological Diversity v. Kempthorne*, 588 F.3d 701, 707 (9th Cir. 2009). Agency decisions may be overturned only if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 891 (9th Cir. 2002) (citations omitted). Judicial review under the APA is limited to the record before the agency at the time of the challenged underlying decision, and not a new record created before the court. *See Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743–44 (1985); *Camp v. Pitts*, 411 U.S. 138, 142 (1973).[7] The standard of review is narrow, as the court may not substitute its judgment for that of the agency. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Nat'l Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 384 F.3d 1163, 1170 (9th Cir. 2004). Instead, the court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of

[6] Federal Defendants do not concede the validity of *Cottrell*'s reasoning that the Ninth Circuit's "sliding scale" test for issuing a preliminary injunction survives *Winter*.

[7] Thus, Holley's suggestion that discovery will be conducted in this case, *see* Pl.'s Mot. at 2, is wrong.

judgment." *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014) (quoting *Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 416 (1971)).

The BIA has both the authority and the responsibility to interpret tribal law when it is necessary to carry out the government-to-government relationship with a tribe. *Greendeer v. Minneapolis Area Dir.*, 22 IBIA 91, 95 (1992). Federal courts have jurisdiction under the APA to review a BIA decision addressing Tribal matters that this Court would not otherwise have jurisdiction over. *Alto v. Black*, 738 F.3d 1111, 1124 (9th Cir. 2013). In other words, federal courts have the authority to construe Tribal law to the extend necessary to conduct an APA review of a BIA decision. *See id.* But absent an initial determination by the BIA, an issue which involves questions of Tribal law—such as a BIA recognition decision—is not properly resolved by a federal court. *Shenandoah v. U.S. Dep't of the Interior*, 159 F.3d 708, 712–13 (2d Cir. 1998). Holley is not likely to succeed on the merits of his claim, which alone is sufficient to show that he is not entitled to an injunction enjoining the Director's Decision.

As initial matter, Holley overstates the effect of the Director Decision. As both the Director, *see* Director's Decision at 14, and Holley, *see* Pl.'s Mot. at 20, recognize, it is the Tribe, and *not* the BIA, which is tasked with conducting tribal elections. Tribes retain their inherent power to regulate domestic relations among members. *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985); *see also Montana*, 450 U.S. at 564; *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983) ("The sovereignty retained by tribes includes the power of regulating their internal and social relations."); *Knighton v. Cedarville Rancheria of N. Paiute Indians*, 922 F.3d 892, 903 (9th Cir. 2019) (same). But because the BIA is required to maintain government-to-government interaction with the Tribe, there are special situations where the BIA must give interim recognition to some representative(s) as the Tribe attempts to resolve the intratribal leadership dispute. *Alturas Indian Rancheria v. Bernhardt*, No. 19-16885, 2023 WL 385176, at *1 (9th Cir. Jan. 25, 2023) (citing *Wheeler*, 811 F.2d at 552); *Winnemucca Indian Colony v. U.S. ex rel. Dep't of the Interior*, 837 F. Supp. 2d 1184, 1192 (D. Nev. 2011).

"A BIA interim recognition decision is intended to determine with whom BIA will interact for government-to-government purposes until the dispute is resolved or until developments within the tribe warrant a new BIA recognition decision, interim or otherwise." Director's Decision at 14 (citing *Picayune Rancheria of the Chukchansi Indians v. Pac. Reg'l Dir.*, 62 IBIA 103, 115 (2016)). Through this interim recognition, the BIA, however, is not involved in the Tribe's election or process of selecting its own government officials under tribal law once a permanent or interim governing body is recognized pursuant to the BIA's limited authority to do so under applicable precedent and 25 C.F.R. Part 2.

There is no dispute that the Tribe must select its governing body. The Director's Decision recognized "the Garcia-Ike Council . . . as the government of the Te-Moak Tribe *for purposes* of conducting business with the federal government and for preparing for the next election cycle." Director's Decision at 31 (emphasis added). Noting that "the recognition of a Tribal Council was necessary to effectuate the upcoming tribal elections," the record made clear there were two competing groups. *Id.* at 30 ("The most important role for the recognized Council to perform with regard to settling this dispute with finality is to take all necessary actions to ensure that valid elections take place in 2024."). Regardless of Holley's objections to the merits of the Director's Decision, the Director's Decision did not "overturn[] the Tribe's election and designation of its representatives," as Holley claims. Pl.'s Mot. at 21. It was necessary for the Director to recognize a governing body for the limited purpose of conducting business with the federal government and preparing the upcoming election to enable the election of a new governing body. *See Goodface*, 708 F.2d at 339; *see also Timbisha Shoshone Tribe v. U.S. Dep't of Interior*, 824 F.3d 807, 808–09 (9th Cir. 2016) ("Faced with these competing claims of authority, [Interior] reviewed the electoral history and recognized one of the factions for a limited time until the Tribe could hold a special election to choose new leadership.").

More to the point, however, Holley is unlikely to—indeed, cannot—succeed on the merits of his case because he failed to exhaust his administrative remedies, as required under 25 C.F.R. § 2.104. Before bringing a claim in federal court, a plaintiff must first exhaust their available administrative remedies. *See Great Old Broads for Wilderness v. Kimbell*, 709 F.3d

836, 846 (9th Cir. 2013) ("The APA requires that plaintiffs exhaust available administrative remedies before bringing grievances to federal court, 5 U.S.C. § 704."). The exhaustion doctrine "provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Stulbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 837 (9th Cir. 2001) (quoting *McKart v. United States*, 395 U.S. 185, 193 (1969)). The BIA's administrative appeal regulations instruct that an aggrieved party "must exhaust the appeal mechanism available under this part before [they] seek review in a Federal district court under the [APA]." 25 C.F.R. § 2.100. If no appeal is timely filed, then the party "will have failed to exhaust administrative remedies required by these regulations." 25 C.F.R. § 2.702; *see also id.* § 2.104 ("If you do not file a timely appeal, you will have failed to exhaust administrative remedies as required by 25 [C.F.R.] part 2.").

The Director's Decision that Holley seeks to challenge resulted from an administrative appeal of the Regional Director's decision recognizing an interim Tribal representative for a limited time and purpose. Pl.'s Mot. at 19; *see also* Compl. ¶ 39. Holley was sent a copy of that Regional Director decision. Ex. D at 1, 16. And the Regional Director clearly stated:

> YOU HAVE 10 DAYS TO APPEAL THIS DECISION.
>
> In accordance with 25 CFR Part 2, Subpart G (copy enclosed), this decision may be appealed to the Director of the BIA at Bureau of Indian Affairs, Director, MS-4606, 1849 C Street, N.W., Washington, D.C. 20240.
>
> Deadline for Appeal. Your notice of appeal must be submitted as provided for in 25 CFR 2.214 (copy enclosed) within 10 (ten) days of the date you receive notice of this decision. Your notice of appeal must explain how you satisfy the standing requirements in 25 CFR 2.200. If you do not file a timely appeal, you will have failed to exhaust administrative remedies required by these regulations. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Id. at 13. Yet Holley never filed an administrative appeal of the Regional Director's decision. Ex. A ¶ 11. Even the Director's Decision revealed "[n]either former Chairman Joseph Holley nor any member of his Council . . . appealed the [Regional Director's] Decision or filed any briefs." Director's Decision at 10. Holley's failure to appeal the Regional Director's decision is particularly significant in light of the fact that the Regional Director's decision to recognize Danena Ike as the Tribal representative was directly adverse to Holley's interests.

The fact that other parties properly appealed the Regional Director's decision to the Director does not cure Holley's failure to exhaust *his* administrative remedies. Nor does his subsequent appeal to the IBIA of the Director's Decision. That administrative appeal is still pending and thus the propriety of Holley's appeal has not been resolved. The governing regulations are clear: by failing to appeal the underlying Regional Director decision, Holley failed to exhaust his administrative remedies and thus cannot seek review in this Court. *See* 25 C.F.R. § 2.100. Indeed, his failure to exhaust his administrative remedies is grounds for dismissal. *See Or. Nat. Desert Assoc. v. Jewell*, 840 F.3d 562, 571–74 (9th Cir. 2016); *Winnemucca Indian Colony*, 837 F. Supp. 2d at 1191.[8] Because Holley failed to exhaust his administrative remedies he cannot show a likelihood of success on the merits. *Glob. Horizons, Inc. v. U.S. Dep't of Lab.*, 510 F.3d 1054, 1058 (9th Cir. 2007) ("When, as here, a party has not shown any chance of success on the merits, no further determination of irreparable harm or balancing of hardships is necessary.").

Even if this Court were to ever reach the merits, Holley is still not likely to succeed. While this Court may review a BIA recognition decision under the APA, judicial review is limited and must be exercised in a way that does not unnecessarily interfere with tribal sovereignty. *See Goodface*, 708 F.2d at 338. The Supreme Court has articulated that:

> Indian tribes are distinct, independent political communities, retaining their original natural rights in matters of local self-government. Although no longer possessed of the full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations.

Santa Clara Pueblo, 436 U.S. at 55 (internal quotes omitted).

Holley is not likely to succeed on the merits because the Director's Decision was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Under the APA, this Court's review would be limited to the administrative record that was before the agency at the time of its decision. *See Fla. Power & Light Co.*, 470 U.S. at 743–44; *Camp*, 411 U.S. at 142. "[E]xceptions to the normal rule regarding consideration of extra-record materials only apply to information available at the time, not post-decisional information." *Cachil Dehe*

[8] Should this Court decline to stay this case, Federal Defendants intend to file a motion ahead of the deadline to respond to Holley's Complaint.

Band of Wintun Indians of Colusa Indian Cmty. v. Zinke, 889 F.3d 584, 600 (9th Cir. 2018) (quoting *Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1130 (9th Cir. 2012)). Thus, in addressing the merits of Holley's claims, this Court could not consider any documents that Holley relies on that were not before the Director, *see, e.g.*, ECF Nos. 14-3, 14-22, 14-23, 14-24, 14-27, 14-28, 14-30, 14-33. Based on the record before the agency, choosing a group for the limited purpose of conducting the tribal election was a reasonable implementation of BIA's authority. *See* Director's Decision at 1 n.1, 3, 7–8, 18, 20–24, 30. Holley has not identified any factor the agency failed to consider, and the Director's Decision thoroughly analyzed the issues presented by the parties that had properly appealed the Regional Director's decision. *See* Director's Decision at 17–31. Holley is incorrect that Interior's authority is limited to recognizing individuals. Interior has not infrequently recognized groups in similar circumstances. *See, e.g.*, *Timbisha Shoshone Tribe v. United States*, 824 F.3d 807, 808 (9th Cir. 2016). Holley's reliance on post-decisional documents and actions are outside the scope of this Court's APA review only highlights his failure to exhaust. Had he presented his concerns to the Director by timely appealing the Regional Director's decision recognizing Danena Ika as Tribal representative, the Director could have considered the information in reaching his decision.

In sum, with respect to Holley's challenges to the Director's Decision, this Court lacks jurisdiction to consider Holley's claims because he failed to exhaust his administrative remedies before he pursued judicial review in federal court. And even ignoring the failure to exhaust, the Director's Decision was not arbitrary or otherwise not in accordance with the law. This Court should deny Holley's motion without addressing the other preliminary injunction factors because he fails to show a likelihood of success on the merits. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014).

3. Holley has not established irreparable harm that he is likely to suffer absent preliminary injunctive relief.

Should this Court reach the other preliminary injunction factors, Holley also fails to demonstrate a likely irreparable harm that would justify injunctive relief. Holley must show a "likelihood of irreparable injury—not just a possibility—in order to obtain preliminary relief."

Winter, 555 U.S. at 21. Mere "[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); *see also Titaness Light Shop, LLC v. Sunlight Supply, Inc.*, 585 F. App'x 390, 391 (9th Cir. 2014) (reiterating that conclusory or speculative allegations do not establish a likelihood of irreparable harm).

Holley focuses on the alleged harm to voting rights if the elections are permitted to move forward and, according to him, that Danena Ike's actions are causing irreparable harm to the Tribe. Pl.'s Mot. at 23–24. He fails to carry his burden for two reasons. First, Holley's claimed injuries are too speculative to support a finding that irreparable harm is likely. Second, there is subsequent judicial relief available to Holley, and other Tribal members, to challenge the elections should they feel the election had been conducted unlawfully.

To the first point, Holley's conclusory statements that Tribe members' voting rights will be harmed, *see* Pl.'s Mot. at 24, do not meet his burden of proving that irreparable harm is likely to occur. *See, e.g.*, *id.* at 25 ("[T]he threat to the 2024 election is irreparable."). Holley does not submit any supporting, competent evidence that his voting rights are somehow at risk. And as the plaintiff, any harms must be harms *to Holley*, not to third-party tribal members. *See Winter*, 555 U.S. at 21 ("A plaintiff seeking a preliminary injunction must establish . . . that *he* is likely to suffer irreparable harm." (emphasis added)). And in any event, Holley's motion is not accompanied by any facts to show that the upcoming elections will be disrupted or that any Tribal members believe they cannot vote in the upcoming election. *See Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (finding irreparable harm not established by statements that "are conclusory and without sufficient support in fact"); *see also All. for the Wild Rockies*, 632 F.3d at 1131 ("Under *Winter*, plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.").

Neither does Holley provide any evidence that Danena Ike or the Garcia-Ike Council's actions are causing harm to Holley or to the upcoming election, or that such future harm to him or the upcoming election is likely or will actually occur. *See generally* Pl.'s Mot. He opines that the Garcia-Ike Council is "not capable or qualified to serve as the Tribe's legislative and

executive branches." Pl.'s Mot. at 2. But perceived performance by government leadership is not a reason for a court to enjoin that leadership's actions. Holley alleges that the Garcia-Ike Council "does not maintain regular meetings in accordance with Tribal law and has sought at every turn to disrupt, instead of further, Tribal operations and the upcoming election." *Id.* at 3. But this assumes, contrary to the Director's Decision, that Holley should be the one organizing the upcoming elections. Holley states that the Garcia-Ike Council has taken actions that "include the wrongful seizure of Tribal funds, political retribution against opponents, and scheduling a competing 2024 Tribal election under conditions whereby Ike's hand-picked 'elections official' claims to have assumed unilateral authority and control over who may and may not cast a vote." *Id.* But this again assumes the validity of Holley's leadership claim and raises issues not related to the upcoming election. Holley compares the Garcia-Ike Council's actions to the Holley Council's action, stating that the Holley Council "has at all times maintained lawful and regular Tribal operations in accordance with Tribal law" and "[m]ost important for purposes of this Motion, these operations include the 'Holley Council's recent Resolution setting forth the schedule for the 2024 Te-Moak Band and Council elections." *Id.* Yet this again ignores the Director's Decision and its limited recognition of the Garcia-Ike Council. *See* Director's Decision at 31. Once one considers that the Garcia-Ike Council was recognized by the BIA since at least mid-July for purposes of organizing the election, it is the actions taken by Holley and the Holley Council (not the Garcia-Ike Council) that are serving to undermine the Tribe's efforts to prepare for the next election cycle. And to the extent Holley is positing that, because of the Garcia-Ike Council's efforts, the election result will be unlawful, that "[s]peculative injury cannot be the basis for a finding of irreparable harm." *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007) (citing *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984)). Holley's allegations therefore cannot merit issuance of an injunction. *See Titaness Light Shop, LLC v. Sunlight Supply, Inc.*, 585 F. App'x 1390, 391 (9th Cir. 2014).

Second, should Holley believe the election was conducted unlawfully, there is subsequent judicial relief available to Holley (and others) to challenge the elections. Holley

recognizes that the Tribal members can appeal the election results. *See, e.g.*, Pl.'s Mot. at 2, 10. "[A] federal agency or court should not address the merits of a tribal election dispute, so long as there is a functional tribal court that can sort out the dispute internally." *Winnemucca Indian Colony*, 837 F. Supp. 2d at 1191. Holley raises concerns about the subsequent Regional Director decision, *see supra* Section III, reinstituting the Tribe's CFR Court, *see* Pl.'s Mot. at 16–17. CFR Courts operate under Interior's regulations, 25 C.F.R. Part 11. Decl. of Jocelyn Beard ¶ 3 (Sept. 29, 2024) (attached as Ex. F). The stated purpose of CFR Courts is "to provide adequate machinery for the administration of justice for Indian tribes" in certain parts of Indian country "where tribal courts have not been established." 25 C.F.R. § 11.102; *see also Denezpi v. United States*, 596 U.S. 591, 595 (2022); Ex. F ¶ 4.

The CFR Court for the Tribe is currently operational and maintains a courtroom and a Court Clerk in Elko, Nevada. Ex. F ¶ 22. Matters concerning the adequacy of a tribal election are questions of tribal law that the CFR Court can address. *Id.* ¶ 23. Where there is an adequate legal remedy available, there is no irreparable harm for purposes of preliminary injunctive relief. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). Therefore, to the extent that Holley is concerned about the legality of any upcoming Tribal election, the availability of further tribal judicial relief means that there is not irreparable harm.

4. The balance of the equities nor the public interest weigh in Holley's favor.

The final two factors also weigh in favor of denying Holley's motions. When approaching the third factor, "a court must consider the impact granting or denying a motion for a preliminary injunction will have on the respective [parties]." *Int'l Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 827 (9th Cir. 1993). As a final factor, the court considers the public interest. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 129 S. Ct. at 376–77. "Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge." *Roman v. Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020).

"[T]he basic function of a preliminary injunction is to preserve the *status quo ante litem* pending a determination of the action on the merits." *Los Angeles Mem'l Coliseum v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). "The status quo means 'the last, uncontested status which preceded the pending controversy." *N.D. ex rel. Parents acting as guardians ad litem v. Hawaii Dep't of Educ.*, 600 F.3d 1104, 1112 n.6 (9th Cir. 2010) (quoting *Maryln Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)). "[T]he 'status quo' refers to the legally relevant relationship between the parties before the controversy arose." *Ariz. Dream Act Coalition*, 757 F.3d at 1061.

Here, granting Holley's motions will only have the effect of further de-stabilizing what already appears to be a difficult situation for the Tribe and its members. The Tribe is without an unanimously recognized leadership. And two groups appear to be planning to hold elections to fill that void. But only one of those groups—the Garcia-Ike Council—has been temporarily recognized by Interior for purposes of organizing the election. The Director's Decision recognizing the Garcia-Ike Council as the Tribe's representative became effective either upon its undated issuance on June 20, 2024, or upon its dated reissuance on July 18, 2024. 25 C.F.R. § 2.714. Thus, rather than preserve the status quo, Holley's motion requests that the Court step in at this late stage and change what has been the state of play for at least three months. Holley seeks for this Court to upend the status quo and recognize him as the leader of the Tribe's government—a remedy that, even if possible under the circumstances (which it is not), Holley deliberately declined to seek administratively when he voluntarily did not appeal to the Director the Regional Director's decision recognizing Danena Ike as the Tribal representative. A disruption of the status quo in the context of approaching tribal elections is not in the public interest, particularly given, as explained above, that any aggrieved party could challenge the election results in tribal court.

Nor, despite what Holley seems to assume, would staying the effect of the Director's Decision place Holley, or the Holley Council, into the unquestionable role of Tribal leadership. Holley claims that he is the true leader because he was validly elected in 2021, Pl.'s Mot. at 5–6, or because he is "the last undisputed Chairman of the Tribal Council[,]" *id*. at 5. *See also*

Director's Decision at 8 ("[T]he Holley Council bases its claim to authority, and Holley's claim to Chairmanship, on the theory that they were elected in 2018, and no successors were validly elected in 2021."). But, as the Director explained, "no Tribal Council had been validly elected" before 2021, Director's Decision at 8. And the Tribe's Constitution requires elections every three years. As of late 2022, and despite having earlier recognized the Holley Council for limited purposes, the BIA "[did] not recognize the last undisputed council as the tribal governing body." Ex. G at 2. *See also* Regional Director's Ltr. to Quintana at 1 (attached as Ex. H) (stating "BIA declined to recognize any faction and instead deferred to the Tribe to resolve the ongoing dispute through a Tribal forum"). Thus, an injunction against the effectiveness of the Director's Decision would only return the Tribe to a circumstance in which neither the Holley Council nor the Garcia-Ike Council is recognized by the BIA for purposes of organizing the election. And as explained above, Holley's request to have this Court instill him into that role is outside this Court's jurisdiction. *See supra* Section IV.A.1.

The public interest is also promoted if this Court exercises restraint in issuing the type of preliminary injunctive relief requested by Holley. *Timbisha Shoshone Tribe v. Kennedy*, 687 F. Supp. 2d 1171, 1190 (E.D. Cal. 2009). Although the Tribe and its members would benefit if the dispute between the factions ended, tribal self-determination and self-governance are important to the public interest. *Id.* And this Court's refusal to get involved in the internal affairs of the Tribe benefits the public. Further, the balance of hardships and public interest requires balancing the harm to Holley and the harm to the government and the public, not balancing the harm to Holley and the harm to the Garcia-Ike Council. *See* Pl.'s Mot. at 24. As Holley recognizes, "public interest factors preserving tribal sovereignty and preventing federal interference in internal tribal matters." *Id.* (citing *Nero v. Cherokee Nation*, 892 F.2d 1457, 1463 (10th Cir. 1989)). Therefore, the public interest strongly favors that this Court allow the Director's Decision to remain in effect, as that will allow for the upcoming elections to be held to attempt to settle the Tribe's leadership dispute according to tribal law, rather than unilaterally impose Holley and his council as the Tribe's government. This is particularly true given that the Holley Council has demonstrably failed to hold necessary elections in accordance with tribal

law in the past, *see* Director's Decision at 2–4 (discussing the Tribe's 2021 and 2022 elections), and that Holley chose to forgo his administrative appeal of the Regional Director's decision to instead seek an extraordinary remedy from this Court, one that this Court lacks the authority to implement. This Court should promote the public interest by abiding by its jurisdiction and foregoing any interference with the Tribe's ongoing intratribal leadership dispute. Holley's request for a stay of the Director's Decision or preliminary injunction enjoining the Director's Decision should therefore be denied.

B. This Court should grant Federal Defendants' motion for a stay of the instant proceedings.

After resolving Holley's motions, the Court should stay the district court proceedings. This Court has the inherent power to stay proceedings before it. *Lockyer*, 398 F.3d at 1109. It would be efficient for this Court's docket—and the fairest result for the parties to the related consolidated administrative appeals—to stay the district court proceedings pending resolution of the consolidated appeals currently before the AS-IA, and it would also avoid duplicative litigation and conserve judicial resources. *Leyva*, 593 F.2d at 863.

Taking the latter point first, a stay of the instant proceedings will result in these proceedings either being simplified or mooted by the AS-IA's adjudication of the related consolidated administrative appeals. Though the Director's Decision is immediately effective and currently constitutes Interior's final agency action (25 C.F.R. § 2.714), the AS-IA decision will constitute a new final agency action (*id.* § 2.712). That new final agency action would either resolve Holley's dispute (mooting the present case) or affirm or present new or additional reasoning that Holley still deems to be inadequate. But even in that latter scenario, Holley would need to file an amended complaint to challenge the new agency decision. Either way, proceeding to adjudicate the present complaint makes little sense. Though we acknowledge that in either case, the likely result of Holley's district court case would be dismissal given his failure to appeal the Regional Director's decision in the first instance.

A stay also would not result in damage, hardship, or inequity to Holley. His present harm relates to the upcoming elections. But we are asking the Court to stay this case only after

it resolves the motions for emergency relief. By contrast, absent a stay, the related consolidated administrative appeals pending before the AS-IA would have to remain stayed due to the instant case. *See* 25 C.F.R. §§ 2.300, 2.714; Ex. C at 2. Thus, by filing his district court case, Holley has effectively limited the appeal rights of the other parties to the administrative appeal. We do not dispute that Interior's regulations afforded Holley the opportunity to file a claim in district court and, once filed, state a preference for the district court case proceeding first. *See* 25 C.F.R. § 2.714; *id.* § 2.300(b). But under the circumstances presented by the consolidated nature of the multi-party appeal before the AS-IA, the appropriate course in this instance is for the administrative appeal to proceed first. Even more so because, unlike the other parties to the administrative appeal, Holley failed to exhaust his administrative remedies.

Any stay of district court proceedings would also be limited in duration. Interior regulations set forth a specific timeline for the AS-IA to act on administrative appeals, requiring a decision within sixty days of briefing being complete (with an extension possible for good cause). *See* 25 C.F.R. § 2.510(c); *see also id.* § 2.510(d) (allowing for summary affirmance).

Federal Defendants therefore request that this Court stay this case pending the earlier of two events: (1) a dismissal of Holley from the related consolidated administrative appeals or (2) the completion of the related administrative proceedings before the AS-IA. Federal Defendants also request that, when staying this case, this Court explicitly allow the consolidated administrative appeals to proceed before the AS-IA while the stay is in effect.

VI. CONCLUSION

For all these reasons, Federal Defendants ask the Court to deny Holley's Motions, and to grant their motion to stay this case and allow the consolidated administrative appeals to proceed before the AS-IA while the stay is in effect.

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Respectfully submitted,

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