**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| STATE OF ALASKA,<br><br>Plaintiff,<br><br>v.<br><br>UNITED STATES DEPARTMENT OF THE INTERIOR, *et al*.,<br><br>Defendants. | ) | No. 1:25-cv-00330-PLF |

**DEFENDANT NATIVE VILLAGE OF EKLUTNA'S MOTION TO TRANSFER**

Defendant Native Village of Eklutna ("the Tribe") respectfully moves for an order transferring this matter from this District to the United States District Court for the District of Alaska under 28 U.S.C. §§ 1631 and 1406(a), or in the alternative, under 28 U.S.C. § 1404(a). This motion is accompanied by a memorandum of points and authorities in support and a proposed order.

Pursuant to Local Rule 7(m), the Tribe conferred with counsel for Defendants the United States Department of the Interior, Brian Mercier, Karen Hawbecker and Sharon M. Avery (collectively, the Federal Defendants), and with counsel for Plaintiff State of Alaska regarding this motion. The Federal Defendants indicated that they support transfer to the District of Alaska. Plaintiff indicated that it opposes this motion.

The Tribe appears specially and makes this motion for the limited purpose of seeking transfer of this action to the District of Alaska. By filing this motion, which is purely procedural, the Tribe does not waive—and expressly reserves—its defenses, including based on jurisdictional defects including sovereign immunity.

Respectfully submitted,

Dated: April 9, 2025

By: */s/ Colin Cloud Hampson*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 9th day of April 2025, a copy of the foregoing document was served via ECF on:

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*/s/ Colin C. Hampson*
Colin C. Hampson

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT NATIVE VILLAGE OF EKLUTNA'S MOTION TO TRANSFER**

## I. INTRODUCTION

This proceeding should be transferred to the United States District Court for the District of Alaska because the State cannot establish personal jurisdiction over the Native Village of Eklutna ("the Tribe") in this Court, venue is improper in this Court, and the applicable factors weigh in favor of transfer. The State has challenged three decisions that address gaming rights for the Tribe and the rules governing tribal territorial jurisdiction over tribal member-owned allotments *in Alaska specifically*. The State, the Tribe and the disputed allotment are all located *in Alaska*. Furthermore, *Holl v. Avery*, Case No. 3:24-cv-00273-JLR, which involves a challenge to one of the same Interior decisions, is already pending *in Alaska*. The effects of this litigation will be felt in Alaska, not in the District of Columbia or nationally. As in similar cases involving gaming approvals, this heavy local interest strongly supports transfer. The State alleges that the District of Columbia court is appropriate because *Eklutna I* was litigated in that court, and the federal officials that made most of the challenged decisions are located in Washington, D.C. But the State relies on that decision only for its preclusion arguments, and the presence of federal defendants

does not automatically make venue proper in Washington, D.C. Because the key applicable factors weigh in favor of transfer, the Court should transfer this case to the District of Alaska.

## II. BACKGROUND

### A. Factual Background & Complaint

The Native Village of Eklutna is a federally recognized tribe of Dena'ina people who have resided in the Upper Cook Inlet region of Alaska since time immemorial, and continue to reside there today. Letter from Sharon Avery, National Indian Gaming Commission ("NIGC") Acting Chairwoman, to Aaron Leggett, Native Village of Eklutna President 2 (July 18, 2024) ("NIGC Approval Letter").[1] The people of Eklutna retained "the use and occupancy of their territory well into the twentieth century." *Id.* Alarmed at the Tribe's shrinking land base, in 1961 Eklutna member Olga Ondola applied for and was ultimately granted a small Native allotment within the Tribe's traditional territory pursuant to the Alaska Native Allotment Act ("ANAA"), Pub. L. No. 59-171, ch. 2469, 34 Stat. 197 (1906). The allotment ("Eklutna allotment") sits approximately five miles as the crow flies from the Native Village of Eklutna in what is now Chugiak, Alaska. NIGC Approval Letter at 3. It continues to be held in restricted status by Ms. Ondola's heirs, all members of the Tribe. *Id.*

In July 2024 the NIGC approved the Tribe's gaming ordinance and issued an Indian lands opinion concluding that the Tribe possesses jurisdiction and exercises governmental power over

[1] Available at https://www.nigc.gov/images/uploads/gamingordinances/20240718_Native_Village_of_Eklutna_Gam_Ord.pdf. The NIGC Approval Letter is one of the three decisions challenged in the State's complaint. *See* Complaint, ECF No. 1 ("Compl.") ¶¶ 11, 66. The Court may properly consider the contents of this document at this stage because "documents that are referenced in, or an integral part of, the complaint are deemed not 'outside the pleadings.'" *Peters v. District of Columbia*, 873 F. Supp. 2d 158, 179 n.20 (D.D.C. 2012) (citing *Mead v. Lindlaw*, 839 F. Supp. 2d 66, 70 (D.D.C. 2012); *Hinton v. Corr. Corp. of Am.*, 624 F. Supp. 2d 45, 46 (D.D.C. 2009)).

the Eklutna allotment; and this basis the NIGC concluded that the allotment constitutes "Indian lands" for purposes of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721. *See* NIGC Approval Letter at 9. The NIGC's decision considered extensive evidence of the Tribe's exercise of government power over the allotment with respect to health care, child protection, environmental regulation, sanitation, and natural resources management, among other matters. NIGC Approval Letter at 8-9. The decision was also based on Solicitor Opinion M-37079, issued by Interior Solicitor Robert Anderson, which concluded that tribes in Alaska are presumed to have jurisdiction over their members' allotments issued pursuant to the Alaska Native Allotment Act. *See* M-37079, *Partial Withdrawal of Solicitor's Opinion M-36975,* Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers*, and Clarification of Tribal Jurisdiction Over Alaska Native Allotments* ("Anderson Opinion").[2] In January 2025, Assistant Secretary of the Interior Bryan Newland approved under 25 C.F.R. pt. 162 a business lease under which the allottees leased the Eklutna allotment to the Tribe for purposes of gaming. Compl. ¶ 11. The Tribe now operates a small gaming facility on the allotment pursuant to IGRA.[3]

In this action, the State seeks review under the Administrative Procedure Act ("APA") of the 2024 NIGC Indian lands opinion and the Assistant Secretary's lease approval, contending they are "arbitrary and capricious" and contrary to law. The State contends the court's decision in *Native Village of Eklutna v. U.S. Dep't of Interior*, No. 19-CV-2388 (DLF), 2021 WL 4306110

[2] Available at https://www.doi.gov/sites/default/files/documents/2024-02/m37079-partial-wd-m36975-and-clarification-trbl-jurisdiction-over-ak-native-allotments-2124.pdf. Like the NIGC Approval Letter, the Anderson Opinion is referenced in, and therefore incorporated into, the State's complaint. Compl. ¶¶ 3, 69; *see Peters*, 873 F. Supp. 2d at 179 n.20.

[3] *See* Zachariah Hughes, *Native Village of Eklutna opens limited gambling operation at site of future casino in Birchwood*, Anchorage Daily News (Jan. 21, 2025), https://www.adn.com/alaska-news/anchorage/2025/01/21/native-village-of-eklutna-opens-limited-gambling-operation-at-site-of-future-casino-in-birchwood/ (last visited Mar. 29, 2025).

(D.D.C. Sept. 22, 2021) ("*Eklutna I*") prevents relitigation by the Tribe and Interior of whether the allotment qualifies as Indian land under IGRA. Compl. ¶¶ 68, 71. Similarly, the State argues the Anderson Opinion was arbitrary and capricious because it was inconsistent with the Court's decision in *Eklutna I*. *Id.* ¶ 69. The State seeks declaratory and injunctive relief regarding relitigation of the issues in *Eklutna I*, an order vacating the NIGC opinion and the lease approval, and injunctions barring Interior from applying the Anderson Opinion and barring the NIGC and Interior from approving gaming ordinances or gaming leases on any allotment in Alaska. *Id.* Prayer for Relief.

Regarding venue, the State alleges that the Court should exercise jurisdiction under the Court's discretionary authority pursuant to the "first to file rule"—notwithstanding the pendency of the related *Holl* litigation in the District of Alaska—because the issues in this case are the same as the issues raised in *Eklutna I*. *Id.* ¶17 (citing *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 627–28 (9th Cir. 1991)).

**B. Statutory Background**

Enacted in 1906, the Alaska Native Allotment Act ("ANAA") provided for the allotment of parcels up to 160 acres in size to Alaska Native people. Act of May 17, 1906, Pub. L. No. 59-171, ch. 2469, 34 Stat. 197 (formerly codified at 43 U.S.C. § 270-1). It expressly provided that "land so allotted [under the Act] shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress." *Id.* The ANAA was enacted to extend the benefits of the General Allotment Act of 1887 to Alaska. *Pence v. Kleppe*, 529 F.2d 135, 138 n.5, 140 (9th Cir. 1976) (the ANAA "plugged a … hole in the coverage of the [General Allotment Act]" after doubt arose as to whether the General Allotment Act applied to Alaska).

In 1970 Congress enacted the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601 *et seq.* Among other things, ANCSA repealed the ANAA but left existing allotments untouched and allowed the patenting of allotments for which applications were pending at the time of passage. *See* 43 U.S.C. § 1617(a). All allotments which had been or were subsequently patented under the Act retain their nontaxable and inalienable status. In this action, the State contends that ANCSA stripped tribes in Alaska of all territorial jurisdiction, including any jurisdiction over their members' allotments issued pursuant to the ANAA. Compl. ¶¶ 30-38. Federal statute defines "Indian country" to include "all Indian allotments, the Indian titles to which have not been extinguished," 18 U.S.C. § 1151(c), and the Supreme Court acknowledged the applicability of this definition to Indian allotments in Alaska, *see Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 527 & n.2 (1998).

In 1988 Congress enacted the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§2701-2721, which provides a statutory basis for regulating gaming activity on Indian lands. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014). Congress enacted IGRA following the Supreme Court's ruling in *California v. Cabazon Band of Mission Indians* that in light of "traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development," California lacked authority to regulate gaming on Indian lands absent congressional authorization. 480 U.S. 202, 216 (1987) (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335 (1983)). Under IGRA, a tribe may authorize gaming on "Indian lands," which includes "any lands . . . held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4)(B).

In 2022 Congress enacted the Violence Against Women Act Reauthorization Act, which

expressly recognizes Alaska tribes' authority to exercise civil and criminal jurisdiction within their villages. 25 U.S.C. § 1305(a) ("Congress recognizes and affirms the inherent authority of any Indian tribe occupying a Village in [Alaska] to exercise criminal and civil jurisdiction over all Indians present in the Village."); *see also id.* § 1305(b)-(d) (providing for civil and criminal jurisdiction over *non*-Indians in specified circumstances); Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, Div. W, tit. VIII, subtit. B, § 811(a)(4), 136 Stat. 49, 905 (2022); Compl. ¶ 57 (discussing same).

## III. ARGUMENT

### A. Standards for a Motion to Transfer

It is "ultimately plaintiff's burden to establish proper venue." *Bailey v. Azar*, No. 19-cv-1721 (RJL), 2020 WL 4201675, at *2 (D.D.C. July 22, 2020) (citing *Myers v. Holiday Inns, Inc.*, 915 F. Supp. 2d 136, 144 (D.D.C. 2013)). In determining proper venue, courts must "accept the plaintiff's well-pled factual allegations as true, resolve any factual conflicts in the plaintiff's favor, and draw all reasonable inferences in favor of the plaintiff." *Escander v. McCarthy*, No. 19-cv-3802 (RC), 2020 WL 5545542, at *3 (D.D.C. Sept. 16, 2020) (citing *Hunter v. Johanns*, 517 F. Supp. 2d 340, 343 (D.D.C. 2007); *Davis v. Am. Soc'y of Civil Eng'rs*, 290 F. Supp. 2d 116, 121 (D.D.C. 2003)). "The court may resolve the motion on the basis of the complaint alone or, as necessary, examine facts outside the complaint." *McCain v. Bank of Am.*, 13 F. Supp. 3d 45, 51 (D.D.C. 2014) (citing *Herbert v. Sebelius*, 925 F. Supp. 2d 13, 17–18 (D.D.C. 2013)), *aff'd*, 602 F. App'x 836 (D.C. Cir. 2015).

If venue is improper, the district court may dismiss under Rule 12(b)(7), although D.C. Circuit courts favor transfer "when procedural obstacles [such as lack of personal jurisdiction, improper venue and statute-of-limitations bars]impede an expeditious and orderly adjudication on the merits." *E.V. v. Robinson*, 200 F. Supp. 3d 108, 114 (D.D.C. 2016) (quoting *Sinclair v.*

*Kleindienst*, 711 F.2d 291, 293–94 (D.C. Cir. 1983) (alteration by the court)). "District courts have 'discretion . . . to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.'" *Tower Lab'ys, Ltd. v. Lush Cosms. Ltd.*, 285 F. Supp. 3d 321, 323 (D.D.C. 2018) (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (cleaned up)).

**B. The Court Should Transfer This Case to the District of Alaska Because Venue Is Not Proper, and This Court Lacks Personal Jurisdiction over the Tribe.**

This Court should transfer this case to the District of Alaska under 28 U.S.C. §§ 1631 and 1406(a) because venue is not proper in this Court, and because this Court lacks personal jurisdiction over the Tribe. Under the analysis applicable to both statutes, venue is proper in Alaska, and the interest of justice favors transfer.

**1. Section 1406(a): Venue Is Not Proper in this Court.**

Section 1406(a) provides "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." "Generally, the interests of justice require transferring a case to the appropriate judicial district rather than dismissing it." *Freedman v. Suntrust Banks, Inc.*, 139 F. Supp. 3d 271, 277 (D.D.C. 2015) (citing *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466–67 (1962)). Venue "must be determined in accordance with the criteria outlined in [28 U.S.C. § 1391]." *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 56 (2013). The State cannot satisfy those venue requirements in this Court.

The venue statute, 28 U.S.C. § 1391, provides that in an action against federal defendants and a non-federal defendant, venue requirements as to the non-federal defendant must be satisfied as "if the United States or one of its officers, employees, or agencies were not a party." *Id.* § 1391(e). Those general venue requirements are found in § 1391(b), which permits a civil action

in:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

Subsection (1) is not satisfied with respect to this Court because the Tribe is not a resident of the District of Columbia. Compl. ¶ 45 (Tribe's government offices are located in Chugiak, AK twenty-two miles northeast of Anchorage, AK); NIGC Approval Letter at 3.

Subsection (2) is not satisfied because the events or omissions giving rise to the State's claim against the Tribe occurred in Alaska, not Washington, D.C., and because the Eklutna allotment is located in Alaska.[4] As the administrative record will reflect, the Tribe made its approval requests to the NIGC and the Bureau of Indian Affairs from its offices in Chugiak, Alaska. The indicia of the Tribe's exercise of governmental authority over the Eklutna allotment (on which the NIGC approval relied) occurred and continue to occur in Chugiak, Alaska. NIGC Approval Letter at 3. The Tribe's exercise of territorial jurisdiction and gaming operation are in Alaska. *Id.* And the previous litigation of *Eklutna I* does not constitute operative facts that would provide a locus for the State's claim, as it involved a challenge to a different decision by Interior and is not relevant to "the availability of witnesses, the accessibility of other relevant evidence,

[4] To the extent that venue might be proper in Washington, D.C. *as to the federal defendants* because the challenged decisions were issued there, that does not make venue proper in D.C. as to the State's claim against *the Tribe*. "In determining whether the 'substantial part' requirement is met, courts should undertake a 'commonsense appraisal' of the 'events having operative significance in the case.'" *E.V.*, 200 F. Supp. 3d at 113 (quoting *Lamont v. Haig*, 590 F.2d 1124, 1134 n.62 (D.C. Cir. 1978)).

and the convenience of the defendant (but *not* of the plaintiff)." *Leroy v. Great W. United Corp.*, 443 U.S. 173, 185 (1979).[5] Although Acting Chair Avery and the Solicitor office are in Washington, D.C., their decisions involve conduct in Alaska and statutes specific to Alaska. Finally, subsection (3) is not relevant here for the reasons discussed in Section B.1 and B.2 below. Accordingly, venue is not proper in Washington, D.C.

**2. Section 1631: This District Cannot Exercise Personal Jurisdiction over the Tribe.**

Transfer of this case to the District of Alaska is also appropriate because this Court lacks personal jurisdiction over the Tribe.

Section 1631 provides that, in any civil action in which the court "finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action" to any other court in which the action could have been brought in the first instance. Transfer is appropriate under Section 1631 upon a showing of the following criteria: "(1) a lack of jurisdiction in the district court; (2) the transfer must be in the interest of justice; and (3) the transfer can be made only to a court in which the action could have been brought at the time it was filed or noticed." *Freedman v. Suntrust Banks, Inc.*, 139 F. Supp. 3d 271, 285 (D.D.C. 2015) (quoting *Fasolyak v. The Cradle Soc'y, Inc.*, No. 06-1126, 2007 WL 207166, at *11 (D.D.C. July 19, 2007)).

This Court lacks personal jurisdiction over the Tribe. To determine whether it may exercise personal jurisdiction over a non-resident, the Court must "first decide whether statutory jurisdiction exists under the District's long-arm statute and, if it does, then . . . determine whether an exercise of jurisdiction would comport with constitutional limitations." *Forras v. Rauf*, 812

[5] Moreover, the State's preclusion claims do not constitute facts at all; they involve purely legal questions that any court can determine. *See Lamont*, 590 F.2d at 1134–35 ("[S]ubstantiality of the operative events is determined by assessment of their ramifications for efficient conduct of the suit.").

F.3d 1102, 1105–06 (D.C. Cir. 2016). The plaintiff bears the burden of establishing a factual basis for personal jurisdiction over each defendant and must allege "specific facts upon which personal jurisdiction may be based." *Blumenthal v. Drudge*, 992 F. Supp. 44, 53 (D.D.C. 1998). A complaint's "conclusionary statement does not constitute the *prima facie* showing necessary to carry the burden of establishing personal jurisdiction." *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 787 (D.C. Cir. 1983).

The Complaint does not provide a factual basis for personal jurisdiction over the Tribe. The District's long-arm statute grants specific jurisdiction over a "person":

> (1) transacting any business in the District of Columbia; (2) contracting to supply services in the District of Columbia; (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia; (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia.

D.C. Code § 13-423(a)(1)–(5) (2025). The State cannot satisfy this test because, as a sovereign, the Tribe is not a person within the meaning of the long-arm statute. *See United States v. Ferrara*, 54 F.3d 825, 831 (D.C. Cir. 1995), *amended* (July 28, 1995) (lacking jurisdiction over a state as a sovereign because a sovereign is not a person within the meaning of District's long-arm statute); *see also Inyo Cnty. v. Paiute-Shoshone Indians of Bishop Cmty. of Bishop Colony*, 538 U.S. 701, 712 (2003) (as a sovereign a tribe is not a "person" entitled to bring action under Section 1983).

Even if the Tribe were a person under the District's long-arm statute, the Tribe's alleged conduct underlying the State's claims – seeking approvals from the federal government and litigating *Eklutna I*, Compl. ¶¶ 4, 6, 9, 46, 47, 49, 62, 68, 71 – does not constitute "transacting business" in the District within the meaning of its long-arm statute because it is not "commercial"

in nature.[6] Rather the Tribe's alleged conduct constitutes "uniquely governmental activities" that do not establish jurisdiction under the long-arm statute. *Morgan v. Richmond Sch. of Health & Tech., Inc.*, 857 F. Supp. 2d 104, 108 (D.D.C. 2012) (quoting *Siam Kraft Paper Co. v. Parsons & Whittemore, Inc.*, 400 F. Supp. 810, 812 (D.D.C. 1975)); *see also Mallinckrodt Med., Inc.*, 989 F. Supp. at 271 (applying exception to filing suit against an agency after denial of an application to a federal agency to approve products).[7] The State does not allege the Tribe contracted to supply services in the District or that it regularly did or solicited business derived revenue, or engaged in any other "persistent course of conduct" in the District within the meaning of § 13-423(a)(2) or (3). Nor does the State allege the Tribe caused "tortious injury" in the District under § 13-423(a)(4).

**3. Transfer to the District of Alaska Is in the Interest of Justice Under Both Sections 1631 and 1406.**

The interest of justice supports transfer to the District of Alaska because the related case *Holl v. Avery* is pending in that jurisdiction and also because there is significant local interest in Alaska regarding the subject matter of this case. The Court has discretion to determine whether to dismiss or transfer a case "in the interest of justice" under 28 U.S.C. § 1406. *Naartex Consulting Corp.*, 722 F.2d at 789. The interest-of-justice analysis under 28 U.S.C. § 1631 is the same as under 28 U.S.C. § 1406. *See Freedman*, 139 F. Supp. 3d at 286. Transfer is in the interest of

[6] The litigation of *Eklutna I* also fails to satisfy this test because it was concluded years ago, and the current litigation challenges entirely new decisions. A person does not become forever subject to the jurisdiction of a State or district simply by taking action there once, when the contact has ceased and the subsequent claim of litigation involves new, separate events. *See Mallinckrodt Med., Inc. v. Sonus Pharms., Inc.*, 989 F. Supp. 265, 271 (D.D.C. 1998) ("It would be ludicrous to suggest that [the Defendants] consented to the jurisdiction of this Court for all time, with respect to all potential competitors, and for all purposes, simply because they once chose to sue the FDA here.").

[7] *See also Ferrara*, 54 F.3d at 831 ("[C]ontact with a federal instrumentality located in the District will not give rise to personal jurisdiction.").

justice when it removes "procedural obstacles" such as "the lack of personal jurisdiction, improper venue and statute of limitations bars" or "would save the parties the time and expense associated with refiling, . . . and where transfer would not prejudice the defendant." *Id*. at 282, 284, 286 (quoting *Sinclair*, 711 F.2d at 294).

The interest of justice strongly supports transfer of this case. First, the related *Holl v. Avery* litigation is pending in the District of Alaska and is well underway with pending motion practice. Like this case, *Holl* involves a request under the APA for an order reversing the NIGC approval of the Tribe's gaming ordinance. This overlap risks inconsistent results if the two cases proceed in different courts. Transfer "will avoid the duplication of judicial resources and possible inconsistent results." *Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 41–42 (D.D.C. 2010) (noting "[s]everal issues in this case overlap with or are related to issues in the ongoing proceedings in the Western District of Texas");[8] *see Martin–Trigona v. Meister,* 668 F. Supp. 1, 3 (D.D.C. 1987) ("The interests of justice are better served when a case is transferred to the district where related actions [involving similar facts and players] are pending."). Transfer is the most efficient use of resources of the courts and the parties.

The Complaint acknowledges that *Holl* is a related case and that *Holl* was filed before this case. Despite these facts, the Complaint asserts that, despite *Holl*, the issues raised in this case are the same as the issues resolved four years ago in *Eklutna I*, and that this decision about a different agency action nonetheless makes *Eklutna I* the first case filed over the current agency action. The State contends that, based on this reasoning, this Court should exercise jurisdiction, and the District

[8] The court also expressed concern about inconsistency with a related prior Fifth Circuit decision while emphasizing "the Western District of Texas district court's ongoing oversight of plaintiff's gambling activities." *Id.* at 41 n.3.

of Alaska should defer to this Court pursuant to the Court's discretion under the "first to file" rule articulated in *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 627–28 (9th Cir. 1991). *See Compl.* ¶17.

This strained argument entirely misconstrues the "first to file" rule. In *Alltrade* the court explained that the "first to file rule" "allows a district court to transfer, stay, or dismiss an action when a similar complaint has already been filed in another federal court." *Id.* at 623. The rule applies when the complaint involves "the same parties and issues" as a pending case already filed in another district. *Id.* at 625 (quoting *Pacesetter Systems, Inc. v. Medtronic, Inc*., 678 F.2d 93, 95 (9th Cir.1982)). The "first to file" rule aims to eliminate the problems that arise when related cases are pending in different courts *at the same time*, not to dictate where all future cases should be filed years after a previous case has been closed.[9] The rule comes from the view that "*parallel litigation* of factually related cases in separate fora is inefficient." *Handy v. Shaw, Bransford, Veilleux & Roth*, 325 F.3d 346, 349 (D.C. Cir. 2003) (emphasis added).[10] Similarly, the D.C. Circuit has repeatedly explained that where two pending cases involve the same transaction or cause of action, the first-filed case "is to be allowed to *proceed to its conclusion* first.'" *Washington Metro. Area Transit Auth. v. Ragonese*, 617 F.2d 828, 830 (D.C. Cir. 1980) (cleaned up); *see also UtahAmerican Energy, Inc. v. Dep't of Labor*, 685 F.3d 1118, 1124 (D.C. Cir. 2012) (same). The rule plainly addresses situations where two cases are actively pending at the same time and involve the same agency action; it has no application to cases that have already been

[9] Indeed, the cases at issue in *Alltrade* were filed just one day apart. *Id.* at 624.

[10] The *Handy* court went on to add: "Indeed, separate parallel proceedings have long been recognized as a judicial inconvenience." *Id.* "In the case of parallel litigation in two federal district courts, the general principle is to avoid duplicative litigation." *Id*. (quotation marks and citation omitted). "So long as the parallel cases involve the same subject matter, the district court should—for judicial economy—resolve both suits in a single forum." *Id.* at 350.

resolved (which, by definition, have already "proceeded to [their] conclusion"). Properly understood, *Eklutna I* has no relevance to the "first to file" rule.

Even if it did somehow apply to *Eklutna I*, "[t]he first-filed suit rule . . . will not always yield the most convenient and suitable forum," and a court "must consider the real underlying dispute: the convenience and suitability of the competing forums." *Intervet, Inc. v. Merial Ltd.*, 655 F. Supp. 2d 131, 134 (D.D.C. 2009) (citing and quoting *Micron Tech., Inc. v. MOSAID Techs., Inc.*, 518 F.3d 897, 904 (Fed. Cir. 2008)). Here, the pendency of the earlier-filed—and currently pending—*Holl* case in the District of Alaska *and* these equitable factors all weigh in favor of transferring the case to Alaska.

Moreover, as discussed further in subsection 4 below, the indisputable true situs of this case is in Alaska. Alaska is where the Eklutna allotment is located, Alaska is where the Tribe's gaming operation is located, and Alaska is where the State alleges it is injured. Finally, transfer would not prejudice the Federal Defendants, who do not oppose transfer and regularly defend litigation in all judicial districts. For all of these reasons, the interest of justice supports transfer.

**4. Transfer is Proper Under Either § 1406 or § 1631 because the State's Claims Could Have Been Brought in the District of Alaska.**

This case may be transferred to the District of Alaska pursuant to § 1391(e)(2). It could "have been brought" in that District as to the federal defendants under § 1391(e)(1)(B), which permits suits against federal officials and agencies in any judicial district in which:

> (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action."

Venue is proper under all three prongs because the Tribe and the State are residents of Alaska, and

the Eklutna allotment,[11] the BIA Regional Office to which the Tribe submitted the challenged lease, and the Tribe's exercise of jurisdiction and its gaming operation are all located in Alaska. *Supra* at 8-9; *see also Alaska Indus. Dev. & Exp. Auth. v. U.S. Dep't of Interior*, No. 23-cv-3126 (JMC), 2024 WL 756602, at *3 (D.D.C. Feb. 23, 2024) ("The Refuge—i.e., the 'property that is the subject of the action' per the terms of Plaintiff's cancelled leases—is situated in Alaska. . . . . And even if this action were characterized as one that does not involve real property, Plaintiff resides in Alaska."); *Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 39–40 (D.D.C. 2010) (finding action could have been brought in Western District of Texas because "NIGC's decision not to provide training to the Pueblo directly impacts the Pueblo's gaming operations in that district" (citing *Apache Tribe of the Mescalero Reservation v. Reno,* No. 96–cv–00115, slip op. at 5 (D.D.C. Feb. 5, 1996) (finding proper venue in New Mexico "because the case involves governmental action that will impact the Tribe's gambling operation which is located there"))).[12]

As to the Tribe, venue would be proper under 28 U.S.C. § 1391(e)(1) and (b)(2), which lays venue in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." As discussed above, *supra* at 8-9, the Eklutna allotment, the Tribe's exercise of jurisdiction and gaming operation are located in Alaska. The Tribe was served with the Complaint and Summons at its government headquarters in Chugiak, Alaska, where the Tribe has resided since time

[11] The third prong is applicable both because the State is a resident of Alaska and because the Eklutna allotment is located in Alaska.

[12] "In determining whether the 'substantial part' requirement is met, courts should undertake a 'commonsense appraisal' of the 'events having operative significance in the case.'" *E.V. v. Robinson*, 200 F. Supp. 3d 108, 113 (D.D.C. 2016) (quoting *Lamont v. Haig*, 590 F.2d 1124, 1134 & n.62 (D.C. Cir. 1978)).

immemorial and where it carries out all of its operations and activities. *See* Fed. R. Civ. P. 4(k)(1)(A); Alaska Stat. Ann. § 09.05.015(a)(1)(D).

**C. Alternatively, the Court Should Transfer This Case to the District of Alaska Based on the Convenience of the Parties and in the Interest of Justice Under 28 U.S.C. § 1404.**

Transfer is warranted "in the interest of convenience and justice . . . taking into account both private interest factors that pertain to the effect of a transfer on those concerned with the specific dispute in question and public interest factors that relate to judicial economy and systemic fairness." *W. Watersheds Project v. Tidwell*, 306 F. Supp. 3d 350, 356 (D.D.C. 2017) (citing *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30 (1988)).

> The private interest factors are "(1) the plaintiff's choice of forum; (2) the defendant's choice of forum; (3) where the claim arose; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) the ease of access to the sources of proof." *United States v. H & R Block, Inc.*, 789 F.Supp.2d 74, 78 (D.D.C. 2011). These factors examine the particular dispute at issue to weigh "the parties' private expression of their venue preferences" as well as "the convenience of witnesses." *Stewart Org.*, Inc., 487 U.S. at 30, 108 S.Ct. 2239. By contrast, the public interest factors capture concerns of "systemic integrity and fairness[,]" *id.*; they are "(1) the local interest in making local decisions regarding local controversies; (2) the relative congestion of the transferee and transferor courts; and (3) the potential transferee court's familiarity with the governing law[,]" *H & R Block, Inc.*, 789 F.Supp.2d at 78.

*Id.* This analysis is an "individualized, case-by-case consideration of convenience and fairness." *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964). A court making such an evaluation may "consider undisputed facts outside the pleadings," and the movant who seeks transfer bears the burden of justifying transfer. *Tidwell*, 306 F. Supp. 3d at 356 (first quoting *Cooper v. Farmers New Century Ins. Co.*, 593 F. Supp. 2d 14, 18 (D.D.C. 2008) then citing *H & R Block, Inc.*, 789 F. Supp. 2d at 78).

When applied to this case, these factors support transfer to the District of Alaska.

**1. Public Interest Factors.**

**a. The Local Interest in Local Controversies.**

The local interest factor weighs heavily in favor of transfer because of the significant local interest in the issues raised in this case. This Court has said, "'[p]erhaps the most important factor' in the motion-to-transfer balancing test is the interest in having local controversies decided locally." *Mandan, Hidatsa & Arikara Nation v. U.S. Dep't of the Interior*, 358 F. Supp. 3d 1, 6 (D.D.C. 2019) (quoting *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 116 (D.D.C. 2015)). "[W]hen a case '[touches] the affairs of many persons' in a district, 'there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only.'" *Jalloh v. Underwood*, 300 F. Supp. 3d 151, 157 (D.D.C. 2018) (second alteration in original) (quoting *Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 57 (D.D.C. 2012)). And the rationale that "[t]here is a local interest in having localized controversies decided at home . . applies to controversies . . . requiring judicial review of an administrative decision." *Ysleta del Sur Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 41 (D.D.C. 2010) (second omission in original) (first quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947); and then quoting *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 70 (D.D.C. 2003)). Similarly, disputes regarding discrete agency decisions that allow one party to undertake an action, such as permitting decisions or agency decisions regarding land use, "are generally recognized to be a 'localized interest.'" *Tidwell*, 306 F. Supp. 3d at 361 (quoting *S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004)); *see also Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26-27 (D.D.C. 2002) (noting local interest in allocation of a piece of real property and reservation boundary).

And gaming disputes, like other disputes involving Indian tribes, also have "strong local implications." *See Ysleta del Sur*, 731 F. Supp. 2d at 41 (citing *Cheyenne-Arapaho Tribe of Okla.*

*v. Reno*, No. 98-cv-065, slip op. at 4 (D.D.C. Sept. 9, 1998)). In *Ysleta del Sur*, the Pueblo challenged an NIGC determination that it was not under NIGC jurisdiction as a result of the Restoration Act that restored the tribe to federal recognition and therefore could not conduct gaming under IGRA. *See id.* at 38-39. In deciding venue, the court held that "[i]t is clear that this litigation, and in particular, the issue of NIGC's jurisdiction (or lack thereof) over plaintiff, has strong local implications, especially for the Pueblo, which is located in Texas." *Id.* at 41. The court went on: "Indeed, 'the members of this District Court have repeatedly . . . transferr[ed] cases involving Indian gaming controversies back to the state in which the controversy and the gaming were located.'" *Id.* (alteration and omission in original) (quoting *Santee Sioux Tribe of Neb. v. Nat'l Indian Gaming Comm'n,* No. 99-cv-528, slip op. at 8 (D.D.C. April 19, 1999)); *see also Wyandotte Nation v. Salazar*, 825 F. Supp. 2d 261, 269 (D.D.C. 2011) ("a 'run-of-the-mill' administrative decision that does not appear to have any national implications, but considerably affects the local interests in Kansas" should be transferred).

Here, there is a significant local interest in the issues raised in the case, which involve the Tribe's gaming rights and the rules governing tribal territorial jurisdiction over tribal-member-owned allotments in Alaska *only*.[13] This is evidenced in the State's description of its injury based on its interpretation of ANCSA, the unique features of the Alaska Native Allotment Act, and its

[13] Multiple news stories and opinion pieces have featured prominently in local news sources. *E.g.*, Jessie Lavoie, *Letter: Native Village of Eklutna is Acting Within its Rights on Gaming Hall,* Anchorage Daily News (Feb. 1, 2025), https://www.adn.com/opinions/letters/2025/02/01/letter-eklutna-is-acting-within-its-rights-on-gaming-hall/; Leah Thom & Quinn White, *Lawsuit Filed Against Eklutna Gaming Hall A Day After Opening to the Public*, Alaska News Source (Feb. 5, 2025, 2:55 PM), https://www.alaskasnewssource.com/2025/02/05/lawsuit-filed-against-eklutna-gaming-hall-day-after-opening-public/; Rhonda McBride, *Anchorage Mayor Supports Eklutna Tribe's Chin'an Gaming Hall*, Alaska Pub. Media (Jan. 13, 2025, 10:27 AM), https://alaskapublic.org/news/anchorage/2025-01-13/anchorage-mayor-supports-eklutna-tribes-chinan-gaming-hall.

assertion that the Solicitor Anderson's opinion "created a seismic shift in Alaska" and that it created a presumption that "approximately 2.7 million acres of land in Alaska were . . . under the jurisdiction of Alaska tribes." Compl. ¶¶ 25, 26, 36, 59, 60; *see Mandan, Hidatsa & Arikara Nation*, 358 F. Supp. 3d at 9 (holding local interest in impacts of drilling permits on lake on reservation that is water source and place of recreation for North Dakotans weighs in favor of transfer); *Alaska Indus. Dev. & Exp. Auth.,* 2024 WL 756602, at *3 ("the Refuge is located in Alaska, and therefore any decisions regarding oil and gas exploration in the region will have acute economic and environmental impacts in Alaska")

**b. Relative Congestion of the Courts.**

This factor weighs in favor of transfer. "Absent a showing that the docket of either court is substantially more congested than the other, this factor is neutral." *Tidwell*, 306 F. Supp. 3d at 364 (quoting *Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303, 315 (D.D.C. 2015)).

The latest statistics tables from the U.S. courts show that, as of December 30, 2024, the District of D.C. had 6,539 pending cases, or approximately 436 per judgeship and the District of Alaska had 800, or approximately 267 per judgeship. *See* United States District Courts – National Judicial Caseload Profile, https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf. A differential of nearly 200 cases per judgeship shows this District is "substantially more congested" than the District of Alaska.[14]

**c. Court's Relative Familiarity with the Governing Law.**

This factor weighs in favor of transfer because of the District of Alaska's greater knowledge of the Alaska-specific statutes at issue in the State's claims. While both districts can

[14] While Alaska had 17.8 vacant judgeship months in 2024, this Court experienced 32.7 vacant judgment months that period. *Id.* And 17.8 percent of cases in Alaska were more than three years old, while 25.6 percent of this Courts cases had been pending for that period of time. *Id.*

decide questions of federal law, the Court has found that "'the courts' respective knowledge of the parties and facts' as well as any 'considerable experience' the transferee court may have in a particular area of the law," may have bearing on this factor. *Mandan, Hidatsa & Arikara Nation*, 358 F. Supp. 3d at 9 (quoting *Ysleta del Sur*, 731 F. Supp. 2d 36, 40-41 (D.D.C. 2010)). The Complaint's citations to the District of Alaska's decisions regarding ANCSA show this factor weighs in favor of transfer. *See, e.g.*, Compl. ¶ 31 (citing *United States v. Atlantic Richfield Co.,* 435 F. Supp. 1009, 1016-18 (D. Alaska 1977), *aff'd*, 612 F.2d 1132 (9th Cir. 1980); *id.* ¶ 36 (first quoting *Alaska v. Native Vill. of Venetie Tribal Gov't,* 522 U.S. 520, 532 (1988); and then quoting *Sturgeon v. Frost*, 587 U.S. 28, 35 (2019), which were both initially filed in the District of Alaska); *id.* ¶ 41 (first citing *Alaska ex rel. Yukon Flats Sch. Dist. v. Native Vill. of Venetie Tribal Gov't*, 101 F.3d 1286, 1303 (9th Cir. 1996); then citing *Native Vill. of Venetie I.R.A. Council v. Alaska*, Nos. 86-0075 civ & 87-0051 civ, 1994 WL 730893, at *12 (D. Alaska Dec. 23, 1994); and then citing the Sansonetti opinion).

The State undoubtedly will argue that the D.C. Court has greater familiarity with *Eklutna I* since that is where and earlier dispute between the parties was litigated. But the State's argument here focuses entirely on whether that case has preclusive effect, a legal argument which either District is equally capable of evaluating. As shown *supra* at 11-12, interests of judicial economy weigh in favor of transfer in light of the pendency of the first-filed *Holl* litigation.[15]

[15] In *Alaska Industrial Development & Export Authority v. U.S. Department of the Interior*, , the court transferred the case to the District of Alaska in part because the plaintiff had recently filed and lost a related case in Alaska, noting that the Alaska federal judge stated "Plaintiffs are seeking from the D.C. District Court much the same relief that th[e] [District of Alaska] previously denied them." 2024 WL 756602, at *4 (alterations in original). The D.C. court also found transfer appropriate in light of local interest in issues related to federal policies governing oil and gas development in the in Arctic National Wildlife Refuge, the relevance of Alaska-specific statutes, and pending litigation filed by other plaintiffs in the Alaska challenging the same Department of Interior program. *Id.* at *3-4.

**2. Private Interest Factors.**

**a. Plaintiff's Choice of Forum**

Under the first factor, "[c]ourts ordinarily give significant deference to the plaintiff's choice of forum, such that the defendant must overcome 'a strong presumption in favor of the chosen forum.'" *Tidwell*, 306 F. Supp. 3d at 357 (quoting *Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 5 (D.D.C. 2013)). However, that deference is reduced where, as here, the plaintiff has "substantial ties and where the subject matter of the lawsuit is connected to" the transferee forum, *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 17 (D.D.C. 1996), such as when the plaintiff resides in the transferee forum, *Shawnee Tribe*, 298 F. Supp. 2d at 24 (collecting cases showing that presumption is substantially lessened when a plaintiff files suit in a forum in which the plaintiff does not reside); *Rasool v. Mayorkas*, No. 1:21-cv-02367 (TNM), 2021 WL 5492976, at *2 (D.D.C. Nov. 23, 2021) ("plaintiff's choice of forum[] counts for less when, as here, the plaintiff does not reside in that forum").

In this case, the State's choice of forum is not entitled to deference because the State, the allotment, and the Tribe are all located in Alaska, and the subject matter of the lawsuit has significantly greater ties to Alaska than to D.C. The Tribe's gaming enterprise and the Tribe's exercise of jurisdiction over the allotment are all occurring in Alaska. And the Tribe submitted its requests for approvals to the BIA and NIGC through the BIA Regional Office in Anchorage. While the NIGC approval and Anderson opinion were issued by officials in Washington, DC, the administrative record will reflect that BIA Regional Office undertook substantial review in Anchorage. Furthermore, the effects of the requested relief in this action will be felt only in Alaska because it would result in the loss of the Tribe's approvals for its gaming enterprise and all the employment and revenues that enterprise provides. The relief requested would also have a direct effect on the Tribe's finances—an impact that will occur in Alaska—because the Tribe is using

gaming revenue to fund governmental services to its members and Village residents. The State's requested reversal of the Anderson opinion, similarly, would impact *only* Alaska because the opinion exclusively addresses Native allotments in Alaska. That makes the subject matter of the lawsuit clearly and directly connected to Alaska. Conversely, the State of Alaska has no connection to Washington D.C.

**b. Defendant's Choice of Forum**

Although "the defendant's choice of forum ordinarily does not receive deference." *Jalloh*, 300 F. Supp. 3d at 156 (citing *Mahoney v. Eli Lilly & Co.*, 545 F. Supp. 2d 123, 127 (D.D.C. 2008)), the defendant's preferred forum receives greater weight when the court concludes a defendant that the has "legitimate reasons" for preferring the transferee forum, for instance when the defendant is located in the district, the majority of operative events occurred in the transferee district, and the outcome of the case "will be felt most directly" in the transferee district. *Bergmann v. U.S. Dep't of Transp.*, 710 F. Supp. 2d 65, 74 (D.D.C. 2010). This factor weighs in favor of transfer because, as discussed above, the Tribe is located in Alaska and the outcome will be felt in Alaska.

**c. Where the Claim Arose.**

This factor weighs in favor of transfer because the claims arose principally in Alaska. *See supra* at 8-9.

**d. Convenience of Parties and Witnesses and Ease of Access to Sources of Proof.**

Since administrative review cases are "often resolved on cross-motions for summary judgment," *Pac. Ranger, LLC v. Pritzker*, 211 F. Supp. 3d 196, 209 (D.D.C. 2016), "the convenience factors carry little weight in the transfer analysis," *M & N Plastics, Inc. v. Sebelius*, 997 F. Supp. 2d 19, 25 (D.D.C. 2013). Nevertheless, this factor weighs in favor of transfer because

the plaintiff, the Tribe, and the disputed allotment are all located in Alaska. *Wyandotte Nation*, 825 F. Supp. 2d at 269 (concluding transfer would increase convenience of the parties because of the location of the subject tribal property).

Because the public and private interest factors favor transfer, the case should be transferred to the District of Alaska pursuant to 28 U.S.C. § 1404.

## IV. CONCLUSION

The State cannot carry its burden to establish that venue is proper in this district, or that this Court possesses personal jurisdiction over the Tribe. Accordingly, this case must be transferred to the District of Alaska pursuant to 28 U.S.C. §§ 1631 and 1406. Alternatively, as a matter of discretion this Court should transfer this case to Alaska pursuant to 28 U.S.C. § 1404 because the interests of justice and the convenience of the parties favor transfer.

Respectfully submitted,

Dated: April 9, 2025

By: */s/ Colin C. Hampson*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 9th day of April 2025, a copy of the foregoing document was served via ECF on:

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*/s/ Colin C. Hampson*
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