UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF ALASKA, Plaintiff, v. UNITED STATES DEPARTMENT OF THE INTERIOR, et al., Defendants.	Civil Action No.: 1:25-cv-00330-PLF

STATE OF ALASKA'S OPPOSITION TO MOTION TO TRANSFER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Unpublished Cases

Federal Statutes

Federal Regulations

Legislative History

Court Rules

Other Authorities

INTRODUCTION

Through this lawsuit, the State seeks to enforce this Court's final judgment in *Native Village of Eklutna v. U.S. Dep't of the Interior*, Case 1:19-cv-02388-DLF. ECF No. 15-19 (Final Judgment); *see also Native Village of Eklutna v. U.S. Dep't of the Interior*, 2021 WL 4306110 (D.D.C. Sept. 22, 2021). This lawsuit is necessary because Robert Anderson, the former Solicitor for the Department of the Interior, did not follow this Court's final judgment even though Interior, as a party to that suit, argued for the very position the Court ultimately adopted. As such, in February 2024, Anderson issued a Solicitor Opinion where he concluded this Court had "erred in both its reasoning and its ultimate conclusion," ECF No. 15-2, at 16, and he offered a novel interpretation that allowed Interior to grant the Native Village of Eklutna (the Tribe or Eklutna) the very relief this Court had denied has a matter of law only four years prior.

Having intervened as a defendant in the prior litigation to protect its sovereign jurisdictional, regulatory, and taxing authority, the State brought this lawsuit to enforce this Court's final judgment. In doing so, it invokes the Court's ancillary enforcement authority, an "inherent power" that exists to allow "a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Peacock v. Thomas*, 516 U.S. 349, 354, 356 (1996).

Of course, the Tribe (and perhaps the federal defendants who have not yet distinguished their position from the former Administration) would like the opportunity to relitigate these issues in another district with the hopes of obtaining a more favorable result. To facilitate this approach, the Tribe now claims the Court lacks personal

jurisdiction over it and that the District of Columbia is an improper venue. That ship sailed in 2019, when the Tribe waived its sovereign immunity by invoking this Court's jurisdiction and agreeing to be bound by this Court's decision. Having lost a case that it voluntarily brought, the Tribe cannot now flout the Court's authority to essentially dissolve its final judgment. The State respectfully requests that the Court deny the Tribe's motion to transfer.

BACKGROUND[1]

Although the State seeks only to enforce a final judgment of this Court, some background information about the law and how the parties arrived at this point is helpful and will inform the Court's decision on the motion to transfer.

I. The Indian Gaming Regulatory Act regulates gaming on "Indian lands," and Interior's longstanding position had been that Alaska Native Allotments were not "Indian lands."

The Indian Gaming Regulatory Act (IGRA) regulates gaming conducted by "Indian Tribes" on "Indian lands." See 25 U.S.C. § 2701 et seq. "Indian lands" are defined as follows:

> Indian lands means:
> (A) all lands within the limits of any Indian reservation; and
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or 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).

[1] The State pulled portions of the background section from its memorandum in support of its motion for a preliminary injunction. ECF No. 15-1. The two sections are not identical, however, and the State added additional background information relevant to this particular motion.

A regulation further explains "Indian lands" to mean:

> (a) Land within the limits of an Indian reservation; or
> (b) Land over which an Indian tribe exercises governmental power and that is either—
> (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
> (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12.

The Tribe is currently conducting "class II" gaming on the "Ondola Allotment," an Alaska Native Allotment. IGRA states that "[a]n Indian tribe may engage in, or license and regulate, class II gaming *on Indian lands within such tribe's jurisdiction*." 25 U.S.C. § 2710(b) (emphasis added). Thus, the analysis of whether the Ondola Allotment is "Indian lands" under IGRA first determines whether the Tribe has jurisdiction over the property and second determines whether the Tribe exercises governmental power over the property through "concrete manifestations of authority." *Kansas v. United States*, 249 F.3d 1213, 1229 (10th Cir. 2001) ("A proper analysis of whether the tract is 'Indian lands' under IGRA begins with the threshold question of the Tribe's jurisdiction."); *Rhode Island. v. Narragansett Indian Tribe*, 19 F.3d 685, 702–03 (1st Cir. 1994) ("In addition to having jurisdiction, a tribe must exercise governmental power in order to trigger the Gaming Act. Meeting this requirement does not depend upon the Tribe's theoretical authority, but upon the presence of concrete manifestations of that authority.").

There are two, separable, forms of tribal jurisdiction: jurisdiction over members and jurisdiction over land. *See, e.g, U.S. v. Mazurie*, 419 U.S. 544, 577 (1975) ("Indian

tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory.") (citing *Worcester v. Georgia*, 31 U.S. 515 (1832)); *Montana v. U.S.*, 450 U.S. 544, 563 (1981) (same) (*quoting United States v. Wheeler*, 435 U.S. 313, 323 (1978)). Only jurisdiction over land, or territorial jurisdiction, matters here. A tribe may have jurisdiction over its individual members even though it has no jurisdiction over any land. *See Runyon ex rel. B.R. v. Ass'n of Village Council Presidents*, 84 P.3d 437, 439 (Alaska 2004) ("Although Alaska no longer contains Indian country, its Native villages retain those fundamental attributes of sovereignty . . . which have not been divested by Congress or by necessary implication of the tribe's dependent status.") (internal quotation marks omitted), *overruled on other grounds by Ito v. Copper River Native Ass'n*, 547 P.3d 1003 (Alaska 2024); *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 267 (Alaska 2016) (tribal courts have "inherent, non-territorial" subject matter jurisdiction to adjudicate child support obligations of members). Alaska's federally recognized tribes are sovereign entities although "severe[d] from the land" and "without territorial reach." *See Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 526 (1998) ("[the Alaska Native Claims Settlement Act] attempted to preserve Indian tribes, but simultaneously attempted to sever them from the land; it attempted to leave them as sovereign entities for some purposes, but as sovereigns without territorial reach") (*quoting Alaska v. Native Village of Venetie Tribal Gov't*, 101 F.3d 1286, 1303 (9th Cir. 1996) (Fernandez, J. concurring)). This is due to Alaska's unique history. *See John v. Baker*, 982 P.2d 738, 754 (Alaska 1999) (stating, in a case of first impression, that "[b]ecause the traditional reservation-based structure of tribal life in

most states forms the backdrop for the federal cases, courts have not had occasion to tease apart the ideas of land-based sovereignty and membership sovereignty"). The Tribe's jurisdiction over the individuals who own and inhabit the Ondola Allotment therefore does not answer the question of whether the Tribe has territorial jurisdiction over the Ondola Allotment.

In the early 1990s, twenty years post enactment of the Alaska Native Claims Settlement Act (ANCSA), the extent of Alaska Tribes' tribal sovereignty, including tribal territorial jurisdiction, remained unresolved. The federal government requested guidance and commissioned Interior to research and produce what became the Sansonetti Opinion, which was issued in 1993. ECF No. 15-4. The Sansonetti Opinion reached two major conclusions: (1) Tribes continue to exist as sovereigns in Alaska, but (2) they do not have territorial jurisdiction over ANCSA settlement lands. ECF No. 15-4, at 107–08. The Opinion pointed to the unique nature of the Alaska Native Allotment Act and the general lack of tribal territorial jurisdiction post-ANCSA to conclude Alaska tribes generally do not have territorial jurisdiction over Alaska Native Allotments. *Id*. at 127–28. It also explained that "Congress ha[d] left virtually no room under ANCSA for Native villages in Alaska to exercise governmental power over lands."[2] *Id*. at 132.

In 1993, Interior formally acted on the Sansonetti Opinion's first conclusion and added Alaska tribes to the list of federally recognized tribes, which was formally ratified by Congress the following year. *See* 58 Fed.Reg. 54,364, 54,365 (describing the

[2] Through ANCSA, Congress revoked all reservations in Alaska except Metlakatla Indian Community's Annette Islands Reserve and repealed the Native Allotment Act. 43 U.S.C. §§ 1617(a); 1618.

Sansonetti Opinion and stating, "in view of the foregoing … the Department of the Interior has determined it necessary to publish a new list of Alaska tribal entities"); Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, § 103(4), (5), 108 Stat. 4791, 4791-92. This act was a recognition and validation of the Sansonetti Opinion. And in 1998, the Supreme Court vindicated the second conclusion of the Sansonetti Opinion by holding that Alaska tribes lack jurisdiction over ANCSA settlement lands. *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520 (1998).

In *Alaska v. Native Village of Venetie*, the Supreme Court held that ANCSA settlement lands are not subject to tribal jurisdiction based on reasoning largely consistent with the Sansonetti Opinion.[3] 522 U.S. 520 (1998). Like the Sansonetti Opinion, the Court analyzed and directly interpreted ANCSA to reach its holding that the structure and Congressional intent of ANCSA precluded settlement lands from being considered "dependent Indian communities" for purposes of federal or tribal jurisdiction, even when owned by a tribe in fee. *Venetie*, 522 U.S. at 534; ECF No. 15-4 (Sansonetti Opinion), at 117–120. However, *Venetie* left open the question of whether a tribe could have territorial jurisdiction over Alaska Native Allotments. *Venetie*, 522 U.S. at 528 & n.2 ("Because ANCSA revoked the Venetie reservation, and because no Indian allotments are at issue, whether the Tribe's land is Indian country depends on whether it [is a] 'dependent Indian communit[y].'"). The allotment question was not before the Court so the Court did not address it.

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[3] Note that, unlike Eklutna, Venetie was one of the few Alaska tribes to inhabit a reservation before ANCSA, and the land in question was former reservation land. 522 U.S. at 523.

The following year, the Alaska Supreme Court held that ANCSA did not extinguish the non-territorial sovereignty of Alaska tribes over their own members. *John v. Baker*, 982 P.2d 738, 748–49 (Alaska 1999); *see also State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 267 (Alaska 2016) (tribal courts have inherent, non-territorial subject matter jurisdiction to adjudicate child support obligations of members).

Between 1993 and 2024, Interior consistently applied the conclusions reached in the Sansonetti Opinion. During this period, Interior denied at least three separate requests for an "Indian lands" determination on the Ondola Allotment under IGRA. Interior denied the Tribe's request in 1995 on grounds similar to the denial later challenged in *Native Village of Eklutna*, 2021 WL 4306110: specifically, that the allotment was not "Indian lands" because the Tribe did not exercise governmental power over the allotment. ECF No. 15-5.[4] The Tribe tried again in 2007, but withdrew its request after the State and the Alaska legislature opposed it. ECF No. 15-6, 15-7, and 15-8 (Note that, although the withdrawal states that the request would be resubmitted, as far as the State is aware the request was not re-submitted.) The third attempt resulted in litigation, with this Court concluding in 2021 that "Sansonetti's interpretation of the Alaska Native Allotment Act was correct." *See Native Village of Eklutna*, 2021 WL 4306110, at *5.

[4] Although this denial does not identify the Ondola Allotment, there are no other allotments in the Eklutna area.

II. In 2021, this Court confirmed that the Sansonetti Opinion correctly held that Alaska tribes lack territorial jurisdiction over Alaska Native Allotments.

After Interior denied the Tribe's third application for an Indian lands determination on the Ondola Allotment in 2018, the Tribe filed a complaint in this Court under the Administrative Procedure Act the following year. *See* EDF No. 15-14. It alleged, among other things, that Interior "failed to recognize that the Sansonetti opinion was based on a flawed analysis and ha[d] been superseded by important changes in law and policy." *Id*., at 21. It further alleged that even if the Sansonetti Opinion was correct, Interior improperly applied the test to conclude the Tribe had not shown a sufficient "original tribal nexus" to the Ondola Allotment. *Id*., at 22. As relief, the Tribe asked the Court to "revers[e] the Department's negative Indian lands determination," "declar[e] that the Allotment constitute[d] 'Indian lands' within the meaning of 25 U.S.C. § 2703(4)," and issue an injunction that would require Interior "to approve the Tribe's proposed lease of the Ondola Allotment." *Id*., at 26.

Interior defended its decision and the Sansonetti Opinion. It argued that "[e]ach of the three conclusions that the Sansonetti Opinion drew from the 1906 [Alaska Native Allotment Act] [were] apparent in the statute's plain language." ECF No. 15-15, at 15. Nowhere in Interior's pleadings did it cite to the now overturned *Chevron* decision to argue the Court must defer to the agency's determination as reasonable. *See Chevron U.S.A. Inc. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984), *overruled by Loper Bright Enter. v. Raimondo*, 144 S. Ct. 2244 (2024); *see also* ECF No. 15-15, 15-16.

The State intervened as a defendant to protect "its sovereign jurisdictional, regulatory, and taxing authority." ECF No. 15-7, at 3. The Tribe did not oppose the

State's motion to intervene. [Exhibit A] Like Interior, the State argued that the Court should "affirm Interior's decision as a correct interpretation of Congressional intent in the Alaska Native Allotment Act and ANCSA." ECF No. 15-18 at 27.

This Court agreed with the State and Interior on the merits, concluding the Sansonetti Opinion was correct on the law. It recognized that because of "Alaska-specific federal statutes and the lack of treaties between Alaska Natives and the federal government," Alaska tribes "lack clearly defined territory subject to their jurisdiction. *Native Village of Eklutna*, 2021 WL 4306110, at *1. As such, when it comes to federal-Indian relations, the Court explained that "'Alaska is often the exception, not the rule.'" *Id*. (*quoting Yellen v. Confederated Tribes of the Chehalis Rsrv*., 141 S. Ct. 2434, 2438 (2021)).

This Court expressly rejected the Tribe's argument that the Sansonetti Opinion was incorrect either as a matter of first impression or based on intervening law or policy changes. It instead held that "[t]he Sansonetti Opinion was valid in the first instance and remains so today." *Id*, at *4; *see also id.*, at *5 ("Sansonetti's interpretation of the Alaska Native Allotment Act was correct."), *id*., at *6 ("Sansonetti also correctly determined that the Alaska Native Claims Settlement Act 'largely controls in determining whether' Alaska Native tribes exercise jurisdiction over Alaskan lands." (quoting ECF No. 15-4, at 108). It held that Congress's subsequent recognition that federally recognized tribes exist in Alaska "had no impact on the validity or applicability of the Sansonetti Opinion to the Tribe's claim." *Id*., at *6–7. It also concluded that the "privileges-and-immunities" provision of the Indian Reorganization Act, *see* 25 U.S.C. § 5123(g), did not change the

circumstances that existed in Alaska. The Court explained that the privileges-and-immunities clause did not require Interior to treat all tribes the same; rather it only required Interior to apply the same "general Indian lands test" to all tribes. *Id*., at *7–8. But in applying that test, Interior also had to consider the "unique factual and legal circumstances [that exist] in Alaska," as Sansonetti had done. *Id*.; *see also id.* at *8 (concluding "Interior applied the correct legal standard when making the Ondola Allotment Indian lands determination").

This Court also held that Interior had correctly applied the Sansonetti Opinion when concluding the Tribe did not have a sufficient "tribal nexus" to the Ondola Allotment. It held that Interior properly distinguished its prior decisions regarding tribes in the Lower 48 by recognizing that, unlike those tribes, Eklutna does not have a reservation or "an existing source of Tribal territorial sovereignty." *Id*., at *8. Moreover, Interior had not acted arbitrarily or capriciously when it concluded the Tribe's evidence was insufficient to establish the required nexus. *Id*., at *8–9. Such evidence included the Ondola family's tribal membership, the location of the allotment in proximity to the Tribe's traditional lands, and the allotment's inclusion in a now-revoked federal reserve. *Id*., at *9. Last, the Court noted that Interior considered the services offered by the Tribe to its members and agreed with Interior's position that "there is a difference between jurisdiction over members and jurisdiction over land." *Id*.

The Court issued final judgment in favor of Interior and the State on September 22, 2021, ECF No. 15-19 (Final Judgment), and the Native Village of Eklutna did not appeal.

III. With no notice to the State, former Solicitor Anderson reconsidered this Court's decision, found it unpersuasive, and issued an Opinion that reached the opposite conclusion.

In February 2024, former Solicitor Anderson partially revoked the 31-year-old Sansonetti Opinion and issued his own opinion that adopted Eklutna's arguments in the prior litigation and announced Alaska tribes now have territorial jurisdiction over Alaska Native Allotments in most circumstances. ECF No. 15-2. In doing so, Anderson also declared that this Court's decision in *Native Village of Eklutna* had been wrongly decided. ECF No. 15-2, at 1–2, 15. Specifically, he disagreed with the Court's analysis of the privileges-and-immunities amendment, concluding "the *Eklutna* court erred in both its reasoning and its ultimate conclusion." *Id.*, at 16. Anderson wrote that Congress must provide an "explicit statutory mandate" to treat different tribes differently and he disagreed with the Court's conclusion that Congress had sufficiently provided such a mandate through the Alaska Native Allotment Act or the Alaska Native Claims Settlement Act. *Id.*, at 16. He also declared that "none of the reasons cited by the [Sansonetti] Opinion for distinguishing Native Allotments from those in the lower 48 states [were] persuasive." *Id.*, at 20.

To further bolster his decision, Anderson also relied on the Violence Against Women Reauthorization Act of 2022 (VAWA 2022), Pub. L. No. 117-113, 136 Stat. 840. ECF No. 15-2, at 17–18. Within VAWA 2022, Congress passed the Alaska Tribal Public Safety Empowerment Act to extend certain benefits to Alaska tribes. Pub. L. No. 117-103, subtit. B., §§ 811-13, 136 Stat. 49, 904-10 (2022) (codified at 25 U.S.C. § 1305). One of the purposes of the Alaska-specific Act was to "empower Indian Tribes" to effectively respond to cases of domestic violence and other related crimes "through the

exercise of special Tribal criminal jurisdiction." Pub. L. No. 117-103, subtit. B., § 811(b)(2). The Act recognized and affirmed Alaska tribes' inherent authority over Indians in their respective villages.[5] *Id*. at § 813(a). It also granted and extended tribal authority over non-Indians in two ways. First, it granted tribes civil jurisdiction to issue and enforce protection orders against any person in matters arising within the village or otherwise within the authority of the Indian tribe. *Id.* at § 813(b). Second, it created a limited criminal jurisdiction for some tribes, based on the theory that tribes have authority over an Indian victim or an Indian perpetrator. *Id*. § 813(d). Anderson believed VAWA 2022 undermined the Sansonetti Opinion because, as he put it, that Act "supplies a connection by recognizing Alaska Native Village Statistical Areas as tribal territorial bases from which tribes in Alaska can assert their inherent jurisdiction." ECF No. 15-2, at 18. What Anderson failed to recognize, however, is that for Alaska tribes to exercise the jurisdiction Congress intended pursuant to VAWA, Congress needed to create the geographic boundaries within which the tribes can enforce their protection orders and limited criminal jurisdiction. By utilizing the census area to define Village boundaries, Congress was careful not to create tribal territorial jurisdiction while still providing the outer geographic limits to the tribes' enforcement authority. *See* 25 U.S.C. § 1305(i)(1) (Nothing in this subtitle . . . limits, alters, expands, or diminishes the civil or criminal

[5] A "Village" is defined to mean the "Alaska Native Village Statistical Area covering all or any portion of a Native village (as defined in [ANCSA]), as depicted on the applicable Tribal Statistical Area Program Verification map of the Bureau of the Census." Pub. L. No. 117-113 § 812(7).

jurisdiction of the United States, the State, any subdivision of the State, or any Indian tribe of the State.").

Prior to issuing his new Solicitor Opinion, Anderson did not contact the State of Alaska or ask for its views. Nor did the Solicitor seek relief from this Court via Federal Rule of Civil Procedure 60(b).

IV. With the Anderson Opinion in hand, federal agencies rushed during the last days of President Biden's administration to issue to the Native Village of Eklutna the other necessary approvals for Indian gaming.

The February 2024 Anderson Opinion was the first of many necessary steps to authorize gaming under IGRA on the Ondola Allotment. In April 2024, the Tribe asked the National Indian Gaming Commission (NIGC) to review and approve the Tribe's gaming ordinance to undertake class II gaming on the Ondola Allotment. ECF No. 15-20, at 1. Two months later, in June 2024, Interior's Solicitor's Office issued a new analysis of the Ondola Allotment, concluding it qualifies as Indian lands under IGRA. *Id*. Like it did with the Anderson Opinion, Interior did not notify the State of its intent to reconsider its (or this Court's) prior decision regarding the Ondola Allotment. A month after Anderson issued his Indian lands decision, the NIGC approved the Tribe's gaming ordinance. *Id*.

After the November 2024 election, Interior moved quickly to grant the Tribe its remaining approvals. First, it issued a draft environmental assessment on December 20, 2024, giving the public only 17 days (including Holidays) to comment. [Final Environmental Assessment, at 1-1][6] After it received several requests for additional time, Interior extended the comment period by only three days, until January 9, 2025. *Id*. The

[6] Available at https://eklutnaea.com/.

then Assistant-Secretary signed the Finding of No Significant Impact on January 16, 2025, the Thursday before President Trump's inauguration. *Id*., at 16. That same day, he also signed the decision to approve the allotment owners' lease of the Ondola Allotment to the Tribe for the purpose of Indian gaming. *See* ECF No. 15-21. That decision relied heavily on Anderson's new Indian lands decision for the Ondola Allotment, which was based on Anderson's Solicitor Opinion. *See id*, at 4–5.

The Tribe began construction on January 17, 2025, and opened a temporary facility on January 20, 2025.[7] The State filed this litigation on February 4, 2025, and on February 28, 2025, officials within President Trump's administration announced that they were suspending for further review all Solicitor Opinions issued by former Solicitor Anderson. ECF No. 15-22.

The State brought this lawsuit to enforce this Court's 2021 final judgment.

ARGUMENT

Federal courts have authority under 28 U.S.C. § 1631 "to cure [a] want of jurisdiction." *See id.* (section title). Federal courts have similar authority to cure improper venue under 28 U.S.C. § 1406(a). A court will transfer a case "filed in the wrong jurisdiction 'if it is in the interest of justice' to do so." *Does 1-44 v. Chiquita Brands International, Inc.*, 285 F. Supp. 3d 228, 233 (D.D.C. 2018) (quoting 28 U.S.C. § 1631). The party requesting transfer has the burden to establish that (1) the court lacks

[7] Jeff Landfield, *Native Village of Eklutna rushes to open Birchwood casino before Trump takes office - The Alaska Landmine*, January 17, 2025, available at: https://alaskalandmine.com/landmines/native-village-of-eklutna-rushes-to-open-birchwood-casino-before-trump-takes-office/

jurisdiction; (2) the transfer is in the interest of justice; and (3) the transfer would be to a court in which the action could have been brought at the time it was filed or noticed. *Id*.

The Tribe cannot meet its burden to show that the District of Columbia is the "wrong jurisdiction." The District of Columbia issued the final judgment the State is seeking to enforce. Having employed the jurisdiction of this Court by bringing that prior litigation, the Tribe cannot now evade the Court's authority to enforce its own judgment. Venue is proper in this Court, and this Court has jurisdiction over the Tribe.

Because the Tribe cannot meet the threshold requirement of either § 1631 or § 1406—a lack of jurisdiction or an improper venue—the remaining analysis under these two provisions is not applicable. As an alternative basis, the Tribe argues for transfer under 28 U.S.C. § 1404(a), which allows a district court to transfer a civil action to any other district or division where it might have been brought if the transfer is convenient for the parties and witnesses and in the interest of justice. The Tribe cannot make the necessary showing under this alternative theory either.

V. This Court has jurisdiction, and this is the proper venue.

A. The Court has ancillary jurisdiction to enforce the final judgment it issued in 2021.

A federal court has "ancillary jurisdiction" to "'manage its proceedings, vindicate its authority, and effectuate its decrees.'" *Peacock v. Thomas*, 516 U.S. 349, 354 (1996) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 379–80 (1994)). This jurisdiction exists because a federal court has the "inherent power to enforce its judgments," and without jurisdiction, "'the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.'" *Id*. at

356 (quoting *Riggs v. Johnson County*, 6 Wall. 166, 187 (1868)). The Supreme Court has "approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments—including attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent conveyances." *Id.* (collecting cases). Lower federal courts have also invoked this jurisdiction to protect declaratory judgments and injunctions from relitigation in state courts. *See Southwest Airlines Co. v. Texas Intern. Airlines, Inc*., 546 F.2d 84, 88–90 (5th Cir. 1977) (concluding the district court had jurisdiction to issue an injunction to stop state court proceedings that "raised questions identical with those decided in [the federal action]"); *Berman v. Denver Tramway Corp*., 197 F.2d 946, 950 (10th Cir. 1952) ("A federal court . . . has jurisdiction through means of a supplemental proceeding to enjoin the relitigation in a state court of a matter litigated, determined, and adjudicated by its valid decree regularly entered, if the result of the relitigation would be to destroy the effect of the decree rendered in the United State Court.").[8] If a federal court has jurisdiction to vindicate its judgment by stopping state court proceedings, it certainly has jurisdiction to protect its judgment from relitigation in another federal district.

Through this lawsuit, the State invokes this Court's ancillary jurisdiction to enforce the final judgment it issued in 2021. *See* ECF No. 15-19 (Final Judgment). That was a declaratory judgment action brought by the Tribe where the Tribe asked the Court to (1) declare the Ondola Allotment constituted "Indian lands" within the meaning of

[8] Congress expressly recognized the importance of this authority when it preserved the federal courts' ability to stay proceedings in a state court "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283.

IGRA; and (2) issue an injunction requiring Interior to approve the Tribe's proposed lease of the Ondola Allotment. ECF No. 15-14, at 26. The Tribe intentionally engaged this Court to resolve the matter and in doing so bound itself to this Court's resolution. The State does not want to relitigate the same issues, for the same parties, for the same Native Allotment; it wants to enforce the final judgment it received in 2021.[9] *See* ECF No. 1, at 24 (asking the court to "[d]eclare that the federal defendants and the Native Village of Eklutna are barred by collateral estoppel and/or judicial estoppel from relitigating the issues resolved in *Native Village of Eklutna v. U.S. Dep't of the Interior et al.*, No. 1:19-cv-02388 (DLF), and, as such, declare that the Department of the Interior's and the National Indian Gaming Commission's decisions were contrary to the law.").

This is unlike any situation where the Supreme Court has cautioned courts against the use of their ancillary jurisdiction. For instance, in *Peacock*, the Court "cautioned against the exercise of jurisdiction over proceedings that are "'entirely new and original.'" 516 U.S. at 358 (citing *Krippendorf v. Hyde*, 110 U.S. 276, 285 (1884)). The State's lawsuit is not "new" or "original"; it seeks only to enforce this Court's prior judgment.[10] *See Krippendorf*, 110 U.S. at 285 (explaining that new and original did not

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[9] The State recognizes that the Native Village of Eklutna only named the Department of the Interior as a defendant in its lawsuit whereas the State named Interior, the acting Assistant-Secretary, the acting Solicitor, and the acting chair of the NIGC. That distinction does not undermine the State's claim that this litigation involves the "same parties" because all of the officials named in the State's complaint are officials within the Department of the Interior.

[10] For this reason, the Tribe's reliance on *Mallinckrodt v. Medical, Inc. v. Sonus Pharmaceutricals, Inc.*, 989 F. Supp. 265 (D.D.C. 1998), is misplaced. *See* Motion, ECF No. 16, at 15. The State is not suing the Tribe on "wholly different issues" than the

include "a bill to enjoin a judgment at law"); *see also id.* ("An unjust advantage has been obtained by one party over another by a perversion and abuse of the orders of the court, and the party injured comes now to the same court to have this abuse corrected, and to carry into effect the real intention and decree of the court."). Nor is the State seeking relief "'of a different kind or on a different principle.'" *See Peacock*, 516 U.S. at 358 (quoting *Dugas v. American Surety Co.*, 300 U.S. 414, 428 (1937)). The State's action is not founded on different facts, nor is it based on a new theory of liability, *see id.*—the State's claim is that this Court already declared the rights of these parties to the exact same parcel of land and the former Solicitor lacked any authority to ignore that final judgment, even if he believed the Court had erred in both its reasoning and its ultimate conclusion." *See* ECF No. 15-2, at 16.

Either the Tribe or Interior may try to defeat the Court's jurisdiction by arguing that the Court resolved the prior litigation without issuing an injunction and, therefore, there was no ongoing obligation by the federal defendants to comply. That argument would not be accurate. Federal courts "have long presumed that officials of the Executive Branch will adhere to the law as declared by the court," and "[a]s a result, the declaratory judgment is the functional equivalent of an injunction." *Comm. on Judiciary of U.S. House of Representatives v. Miers*, 542 F.3d 909, 911 (D.C. Cir. 2008) (citing *Sanchez-Espinoza v. Reagan*, 770 F.3d 202, 208 n.8 (D.C. Cir. 1985)); *see also Samuels v. Mackell*, 401 U.S. 66, 73 (1971) (stating that a declaratory judgment and injunctive relief

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2021 litigation, *see Mallinckrodt*, 989 F. Supp. 265; the State is seeking to protect the favorable judgment it received in that litigation.

are "virtually identical"). Therefore, had either the Tribe or Interior wanted to seek relief from this Court's final judgment, the proper course was not to have an Executive Branch employee review and decline to follow this Court's judgment; the proper course would have been to file a motion under Rule 60(b)(5) and make a showing that "'a significant change either in factual conditions or in law' render[ed] continued enforcement [of the judgment] 'detrimental to the public interest.'" *Jordan v. U.S. Dep't of Labor*, 331 F.R.D. 444, 453 (D.D.C. 2019) (quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009)). Notably, had either the Tribe or Interior properly filed a Rule 60(b) motion, it would have been in this Court and the State would have received notice and had an opportunity to participate.

The Tribe or Interior may also argue that the Court should still transfer this case by suggesting the State seeks relief beyond the relief afforded by the Court in its 2021 judgment. Reviewing its complaint, the State acknowledges that two of its requests may have extended too far—those being: (1) its request for the Court to enjoin Interior from applying the Anderson Opinion to any other Native Allotment in Alaska; and (2) its request for the Court to enjoin NIGC and Interior from granting a gaming ordinance or approving a lease for gaming purposes for any Native Allotment in Alaska. *See* ECF No. 1, at 25. Consistent with its position that this litigation was brought to enforce this Court's prior judgment, the State will file, and if needed seek leave to file, an amended complaint that removes those two requests for relief.

To the extent the Tribe or Interior attack the State's position on any other miscellaneous process issues, the State represents that it will do whatever needed to comply. For instance, the Tribe or Interior may argue that the State should have moved to

reopen the prior litigation and filed a motion to enforce instead of filing a complaint to create a new action. That may be true. Candidly, this case presented unique circumstances, and there is at least one court that has endorsed the process the State took here. *See Berman*, 197 F.2d at 950 ("[F]or the purpose of protecting the effectiveness of its judgment or decree, a United States Court may entertain an independent action rather than a supplemental proceeding in the original action to enjoin the relitigation in a state court of matters already fully adjudicated in the United States Court."). Nevertheless, should the Court conclude a different process must be followed—such as filing a motion to enforce in the prior litigation—the State will promptly comply. The State also has no objection to the Court transferring this proceeding to Judge Friedrich, who presided over the initial litigation.

This Court already resolved this case. That occurred in 2021, and the State seeks only to enforce that judgment. This case is squarely within the Court's ancillary enforcement jurisdiction.

B. The Court has jurisdiction over the Tribe.

Because this case is within the Court's ancillary enforcement jurisdiction, the Court has jurisdiction over the Tribe. *See Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1246 (8th Cir. 1995). When the Tribe filed its lawsuit in 2019 to resolve whether the Ondola Allotment constituted "Indian lands" under IGRA, *see* ECF No. 15-14. at 26, it submitted itself to the jurisdiction of the Court "with respect to all issues embraced in the suit." *See Leman v. Krentler-Arnold Hinge Last Co*., 284 U.S. 448, 451 (1932). Whether the federal defendants and the Tribe are acting in violation of the Court's final judgment

is an issue "embraced" by the Tribe's original lawsuit. *See Peacock*, 516 U.S. at 356 (stating that "[w]ithout jurisdiction to enforce a judgment," a federal court's "judicial power would be incomplete and entirely inadequate").

Underlying the Tribe's arguments about personal jurisdiction is another issue—the Tribe's sovereign immunity. As a federally recognized tribe, the Native Village of Eklutna possesses the "common-law immunity from suit traditionally enjoyed by sovereign powers." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 387 (2023); *see also* ECF No. 1, at 6 (recognizing that "Defendant Native Village of Eklutna is a federally recognized tribe under the Federally Recognized Indian Tribe List Act of November 2, 1994, 108 Stat. 4791, 89 Fed. Reg. 947 (January 8, 2024)."). Although the Tribe raises only personal jurisdiction in its motion to transfer, it has also made clear that it intends to file a motion to dismiss based on sovereign immunity. *See* ECF No. 20, at 8 (stating the Tribe "intends to file a motion to dismiss which may need to be revised and refiled in the District of Alaska"); *see also* ECF No. 16, at 1 (stating that the Tribe appears only to file the motion to transfer and "does not waive—and expressly reserves—its defenses, including based on jurisdictional defects including sovereign immunity").

The Tribe's sovereign immunity is the very reason the State filed its litigation in this Court.[11] Take, for example, a different set of facts. Assume the Tribe never filed its

[11] It is unlikely that this Court's interests in enforcing its final judgment extends to the District of Alaska. *See Winter v. Novartis Pharmaceuticals Corp.*, 39 F. Supp. 3d 348, 352 (E.D.N.Y. 2014) (stating that nothing suggests "that the purposes behind ancillary jurisdiction extend to judgments rendered by any federal court anywhere in the country").

complaint on the Ondola Allotment in 2019 and assume also that the Biden Administration followed the same course and revoked the Sansonetti Opinion and issued a new Indian lands determination for the Ondola Allotment. Under those circumstances, the Tribe's sovereign immunity would likely protect it from any lawsuit the State would bring against the Tribe and the Federal government.[12] But those are not the facts here. Here, the Tribe brought a lawsuit and received an unfavorable decision from this Court. *See generally Native Village of Eklutna*, 2021 WL 4306110 (rejecting all of the Tribe's arguments). By submitting itself to the jurisdiction of this Court, the Tribe should not now be allowed to evade the consequences of that decision. *See Aquinnah/Gay Head Community Association, Inc. v. Wampanoah Tribe of Gay Head*, 989 F.3d 72, 83 (1st Cir. 2021) ("The Supreme Court . . . has looked unfavorably on a sovereign's attempts to 'regain immunity" even after it 'litigated and lost a case brought against it in federal court."); *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1245–46 (8th Cir. 1995) ("While it is true that 'when consent to be sued is given, the terms of the consent establish the bounds of a court's jurisdiction,' this does not mean that the Tribe can condition its consent so as to flout the authority of the district court.") (internal citation omitted) (quoting *Ramey Constr. Co v. Apache Tribe of Mescalero Reserv.*, 673 F.2d 315, 320 (10th Cir. 1982)); *United States v. Oregon*, 657 F.2d 1009, 1015 (9th Cir. 1981) (concluding the district court had jurisdiction to enjoin a tribe after the tribe intervened in

[12] Such litigation could proceed without the Tribe because the Tribe would not be a necessary, let alone indispensable party. *See Kansas v. United States*, 249 F.3d 1213, 1226 (10th Cir. 2001) (concluding the tribe was not necessary or indispensable party in litigation challenging an Indian lands determination by NIGC).

an ongoing fishing dispute because, "[o]therwise, tribal immunity might be transformed into a rule that tribes may never lose a lawsuit").

The Tribe's plan appears to be to avoid this Court's authority to enforce its final judgment and then avoid the lawsuit all together by arguing that it is an indispensable party that the State cannot join because of its sovereign immunity. Should it prevail, the Tribe will have transformed its immunity "into a rule that tribes may never lose a lawsuit." *See Oregon*, 657 F.2d at 1015. Respectfully, that cannot be the rule as it would delegitimize the judicial system and excuse tribal nations from Congress's plenary authority as interpreted by the courts. Ancillary jurisdiction exists for this very reason. *See Owen Equipment & Erection Co v. Kroger*, 437 U.S. 365, 376 (1978) (recognizing that a reason for ancillary jurisdiction is to protect those "whose rights might be irretrievably lost unless he could assert them in an ongoing action in a federal court"). The Court should exercise its inherent authority to protect its judgment and deny the Tribe's motion to transfer.

C. Venue is proper in this Court.

Along with arguing the Court lacks personal jurisdiction over the Tribe, the Tribe also argues transfer is necessary because the District of Columbia is not the proper venue to resolve this dispute. *See* 28 U.S.C. § 1406(a) ("The 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."). A civil action may be brought in a "judicial district in which a

substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2).

Because the State's claim is a claim to enforce a judgment of this Court, venue is proper here. This litigation did not start on a blank slate. The State is not seeking to litigate whether the Ondola Allotment constitutes "Indian lands" or whether the Sansonetti Opinion offered a correct interpretation of the law; that litigation already occurred. What the State seeks is to enforce this Court's final judgment. And while it is true, as the Tribe argues, that the District of Alaska is just as capable as this Court at applying judicial and collateral estoppel, the District of Alaska did not issue the final judgment in 2021, and it does not have the same interest in enforcing that judgment as this Court. *See Winter.*, 39 F. Supp. 3d at 352 (stating that nothing suggests "that the purposes behind ancillary jurisdiction extend to judgments rendered by any federal court anywhere in the country"). Therefore, because the District of Columbia is the judicial district in "which a substantial part of the events or omissions giving rise to the claim occurred," venue is proper here and not in the District of Alaska.

The State also notes that it was not the party that chose the District of Columbia to resolve the dispute that led to the 2021 final judgment—that was the Tribe. In 2019, the Tribe filed its Complaint in this district and, in doing so, alleged: "Venue is proper in this district because the defendants reside in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district." ECF. No. 15-4, at 4.

The State does not dispute the truth of the Tribe's allegation, and that allegation holds true for this litigation as well. Each of the actions taken by the federal defendants in

violation of this Court's final judgment occurred in the District of Columbia. First, sometime prior to June 27, 2024, the Tribe submitted a request to the Solicitor of Interior for a new "Indian lands" determination. *See* ECF No. 15-20, at 1–2.[13] The Solicitor's office is located within this district. *See* ECF No. 1, at 1 (providing address). Second, the Tribe submitted a request to the NIGC to have the Acting Chair, Sharon Avery, "review and approve" the Tribe's gaming ordinance. ECF No. 1, at 4; ECF No. 15-20, at 1 ("This letter responds to your request, dated and received on April 22, 2024, for the [NIGC] Chair to review and approve the Native Village of Eklutna's (Tribe) Gaming Ordinance."). The NIGC's office is located within this district. *See* ECF No. 1, at 1 (providing address). Third, the Tribe submitted its lease from the owner of the Ondola Allotment to the Bureau of Indian Affairs for approval. ECF No. 15-21, at 1; *see also* ECF No. 1, at 4. Because such requests must be approved by the Assistant-Secretary, the Regional Director of the Alaska Region transmitted the request to the Assistant Secretary's office in Washington, D.C. ECF No. 15-21, at 1.

The District of Columbia was the venue the Tribe choose in 2019 to resolve the dispute over the Ondola Allotment and it remains the appropriate venue in 2025 for litigation about enforcing this Court's final judgment in that prior ligation. Therefore,

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[13] The State does not have a copy of the Tribe's submission but it is referenced in the NIGC decision. *See* ECF No. 15-20, at 1–2. That decision adopts and restates the decision of the Solicitor. *Id*. at 1 ("As I agree with the [Solicitor's] analysis, as incorporated herein, I hereby adopt its reasoning as the basis of my decision." Within the Solicitor's Indian lands decision, he repeatedly references the Tribe's "2024 Submission" to support his position. *See, e.g.*, *id.*, at 2 nn. 1, 2, 3, 4, 5, 7, 8.

there is nothing this Court needs to "cure" and the Tribe's transfer request under 28 U.S.C. § 1406(a) should be denied.

VI. The Court should deny the alternative request to transfer under 28 U.S.C. § 1404(a).

As an alternative request, the Tribe argues that the Court should transfer under 28 U.S.C. § 1404(a). This provision provides the Court "with a mechanism to transfer a case, even in cases where venue is proper in the transferor court, in order 'to prevent the waste of time, energy and money[,] and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.'" *Wilderness Workshop v. Harrell*, 676 F. Supp. 3d 1, 5 (D.D.C. 2023) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)).

Courts employ a two-step analysis to decide whether to transfer a case under § 1406(a). The threshold question is whether the case could have been brought in the transferee district. *Id.* If so, the Court considers whether the private and public interests support transfer. *Id.* Private interest factors include: (1) the plaintiff's choice of forum; (2) the defendant's choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties and witnesses; and (5) ease of access to sources of proof. *Id.* The public interest factors include: (1) the local interest in having local controversies decided at home; (2) whether judicial efficiency would be affected by the transferee's familiarity with the governing laws and/or the pendency of related litigation in the transferee court; and (3) the relative congestion of the calendars of the transferor and transferee courts. *Id.* at 5.

The Tribe cannot satisfy the threshold question let alone demonstrate that either the private or public interests support transfer.

A. It is not clear whether litigation could have been brought in the District of Alaska.

It is not clear whether the State's case could have been brought in the District of Alaska. First, the District of Alaska likely does not have the same "inherent authority" to enforce this Court's 2021 final judgment. *See Winter v. Novartis Pharmaceuticals Corp*., 39 F. Supp. 3d 348, 352 (E.D.N.Y. 2014). Second, if the District of Alaska lacks that same "inherent authority," then it becomes questionable as to whether the State could enforce the final judgment against the Tribe due to its sovereign immunity.[14]

What is even more concerning is the Tribe's and federal government's position that this type of litigation cannot move forward in the Ninth Circuit against either the Tribe or the federal government due to the Tribe's sovereign immunity. In its motion to transfer, the Tribe argued the interests of justice support transfer in this case because the related *Holl v. Avery* litigation is "well underway with pending motion practice." ECF No. 16, at 16. What is pending is the Tribe's ripe Motion to Dismiss Plaintiffs' First Amended Complaint, [Exhibit B] which is supported by the federal defendants, [Exhibit C]. The Tribe argues that the litigation must be dismissed due to the Tribe's sovereign immunity and for failure to join an indispensable party. [Exhibit B, at 2] The

[14] By making this point, the State preserves its ability to argue the Tribe waived its sovereign immunity. *See Aquinnah/Gay Head Community Association, Inc. v. Wampanoah Tribe of Gay Head*, 989 F.3d 72, 83 (1st Cir. 2021) ("The Supreme Court . . . has looked unfavorably on a sovereign's attempts to 'regain immunity" even after it 'litigated and lost a case brought against it in federal court.").

federal defendants support that position, saying Ninth Circuit caselaw "controls in this case and supports dismissal pursuant to Rule 19." [Exhibit C, at 2]

Not all circuits have reached the same conclusion as the Ninth Circuit. *See Kansas v. United States*, 249 F.3d 1213, 1226 (10th Cir. 2001) (concluding the tribe was not a necessary or indispensable party in litigation challenging an Indian lands determination by NIGC). But again, whether the Tribe waived its sovereign immunity or is an indispensable party is not an issue in the State's case because this case is about enforcing a final judgment issued when the Court clearly had jurisdiction over the Tribe.

B. The private interest factors weigh against transfer.

In considering the private interest factors, the Court should give "substantial deference" to the State's choice of forum as the plaintiff. *See Wilderness Workshop*, 676 F. Supp. 3d at 5. This is not the case where a forum has no meaningful tie to the controversy or no particular interest in the parties or the subject matter. *See id.* (saying that deference to the plaintiff's choice of forum is diminished where the forum has no meaningful ties to the controversy). This Court already decided the underlying issue once; it has a very real interest in vindicating its final judgment. But even beyond that, this is a case where "D.C. officials were actively consulted" on the relevant decisions. *See id.* at 6. The decisions in question were not made by local Alaska officials, they were made by Interior's Solicitor, the Acting Chair of the NIGC, and Interior's Assistant-Secretary, all officials based in the District of Columbia.[15]

[15] None of the other private interest factors tip the scale in the Tribe's favor. The Tribe's choice of forum is not entitled to deference because the State's preferred forum

C. The public interest factors also weigh against transfer.

The State acknowledges that there is a local interest in this litigation. *See* ECF No. 16, at 22 (describing local interest in this case). But the Tribe fails to recognize or even acknowledge the fact that these issues have already been litigated and this district "has a meaningful connection to the controversy." *See Wilderness Workshop*, 676 F. Supp. 3d at 8 (declining to weigh the local nature of the controversy in favor of transfer when there was a "meaningful connection" to the transferor forum). It was the Tribe, not the State, that chose to bring the initial litigation in this Court. And there was local interest in that litigation as well.[16]

In its motion, the Tribe relies heavily on the related *Holl v. Avery* litigation pending in the District of Alaska to support its argument for transfer. It argues that this case tips the "interest of justice" in its favor because the "overlap" between the two cases "risks inconsistent results if the two cases proceed in different courts." *See* ECF No. 16,

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has a meaningful connection to the case. *Wilderness Workshop*, 676 F. Supp. 3d at 7. Also, given this case is about enforcing this Court's final judgment, there is no reason to expect a trial, witnesses, or extra-record evidence. *Id.*

[16] Alex DeMarban, *Federal judge rules against tribal government's bid to open gaming hall*, Anchorage Daily News (Sep. 22, 2021), https://www.adn.com/alaska-news/anchorage/2021/09/22/federal-judge-rules-against-eklutna-tribal-governments-bid-to-open-a-gaming-hall/; Liz Ruskin, *Federal Judge Rules Against Native Village of Eklutna in Effort to Build Gaming Parlor*, Alaska Public Media (Sept. 24, 2021), https://www.knba.org/news/2021-09-24/federal-judge-rules-against-native-village-of-eklutna-in-effort-to-build-gaming-parlor; Associated Press, *Judge Rules Against Village Plans for Gaming Hall*, Wrangell Sentinel (Oct. 7, 2021), https://www.wrangellsentinel.com/story/2021/10/07/news/judge-rules-against-village-plans-for-gaming-hall/9319.html

at 16. Because this argument also relates to the second public interest factor, the State addresses it here.

The Tribe correctly notes that there is a "risk" of "inconsistent results" but that is not because of the State's litigation. The risk exists because the Tribe and the federal defendants want a second bite of the apple; they want the District of Alaska to either dismiss the case outright or reach a different conclusion on the same legal issues for the same parcel of land. The Tribe and the federal defendants had options in the event they disagreed with this Court's final judgment. The Tribe's option following final judgment was to appeal. The federal defendants' option was to file a motion for relief from a final judgment under Federal Rule of Civil Procedure 60(b). Nothing allows a party to forego an appeal, wait for a federal official to disregard a court's final judgment, and then find a different district court in a different district that will reach a different result.

The local rules in the District of Alaska contemplate similar circumstances and suggest that the Alaska court will defer to this Court. As the Tribe correctly notes, the State complied with this Court's local rules and provided notice of the related case in the District of Alaska. *See* ECF No. 16, at 12 ("The complaint acknowledges that *Holl* is a related case."). The local rules within the District of Alaska require the parties to file a similar notice. Local Civil Rule 3.1(b) for the District of Alaska provides that "[t]he Civil Cover Sheet must list all related cases, *open or closed*, *in this or any other federal or*

state court, of which the filer is aware."[17] (Emphasis added). The rule goes on to provide that "[c]ases are related" when they:

> (1) Concern substantially the same parties, claims, property, transaction, events, or substantially identical facts and legal issues; and
> (2) Are likely to create an unduly burdensome duplication of labor and expense or the potential for conflicting results if assigned to different judges.

D. Ak. LR 3.1(b). Local Rule 16.1(e) imposes on parties an obligation to notify the court of all related cases. Specifically, it says that, "[w]henever a party has reason to believe that a civil action is related to another matter, as defined by Local Rule 3.1, the party must promptly file a Notice of Related Case. That notice must include "the court, title, case number, and filing date of each matter believed to be related," "a brief statement of the relationship," and "a statement whether a common judicial assignment or consolidation is requested." D. Ak. LR 3.1(b). All other parties then have 14 days to respond to the notice. *Id.*

Under the District of Alaska's local rules, *Holl v. Avery* is "related" to *Native Village of Eklutna v. U.S. Department of the Interior*, Case 1:19-cv-02388-DLF because

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[17] The State did not list the first Eklutna litigation as a related case because closed cases do not fall within the definition of related case under the District of Columbia's local rules. *See* LCvR 40.5(a)(3) ("Civil, including miscellaneous, cases are deemed related when the earliest is still pending on the merits in the District Court and they (i) related to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent.") and LCvR 40.5(a)(4) ("Additionally, cases whether criminal or civil, including miscellaneous, shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter."); *see also Wilderness Society v. Bernhardt*, 2020 WL 2849635, at *2 (June 2, 2020) (stating that when summary judgment is entered a case is not "dismissed, with prejudice or without").

the two cases involve substantially the same parties, claims, and property and are likely to create an unduly burdensome duplication of labor.[18] Despite this, the Tribe offers no explanation as to why it only notified the District of Alaska court of the State's current litigation and not the Tribe's prior litigation. [*See* Exhibit D, (Tribe's notice)][19] Had it done so, the assigned district court judge within the District of Alaska may very well have already transferred that case to this district; alternatively, it could stay that case pending resolution of the State's litigation here.

The likelihood that the District of Alaska would defer to this Court on the issues raised by the State in its complaint are even higher given the district's current circumstances. As of July 2024, the District of Alaska has only one active judge.[20] That active judge cannot preside over *Holl v. Avery* because her immediate family member entered an appearance to represent the Tribe in *Holl*. *See* 28 U.S.C. § 455(b)(5)(ii); *see also* Exhibit G (Docket Report). As such, *Holl* is currently assigned to the Honorable

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[18] The plaintiffs in *Holl* have raised issues that go beyond the issues resolved in 2021. But as far as challenging whether the Ondola Allotment are "Indian lands" under IGRA, the issues are the same.

[19] The federal defendants took the same approach as the Tribe, notifying the district court only of the State's current litigation and not the litigation that the Tribe filed in 2019 in *Native Village of Eklutna v. U.S. Dep't of the Interior*, No. 1:19-cv-02388-DLF. [*See* Exhibit E]

[20] Sean Maguire, *Judge Kindred's resignation leaves Alaska with just one active federal judge*, ADN.com (July 9, 2024); available at: https://www.adn.com/politics/2024/07/09/kindreds-resignation-leaves-alaska-with-one-active-federal-judge/ (accessed on April 14, 2025).

James L. Robart, a visiting judge from the Western District of Washington.[21] *See* Exhibit F (Docket Report); Exhibit G (Order).

The fact that *Holl v. Avery* is currently assigned to a visiting judge from Washington undermines the Tribe's arguments that the District of Alaska has "greater knowledge of the Alaska-specific statutes at issue in the State's claims." *See* ECF No. 16, at 24. That would have been undeniably true if the case was actually being heard by one of the district's active or senior judges. Indeed, in a different case addressing Alaska tribal territorial jurisdiction, the District of Alaska's sole active judge already indicated that she found what the federal defendants did here "troubling." *See Alaska v. Newland*, 2024 WL 317800, at *10 n.95 (D. Alaska June 26, 2024) ("While the Court finds troubling DOI's abrupt change of position during the pendency of this case—a position which, until this litigation, had remained the same since 1993—and DOI's conclusion that a still-valid district court opinion holding that Alaska Native allotments lack tribal territorial jurisdiction is wrong, that issue is not before the Court.").[22] But none of the District of

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[21] The State is unsure of the best course to notify Judge Robart of the current circumstances or to inform him that there is an additional related case in *Native Village of Eklutna v. U.S. Dep't of the Interior*, No 1:19-cv-02388-DLF. Given that neither the Tribe or the federal defendants have filed the proper notice, the State is willing to file a limited motion to intervene in *Holl v. Avery* to notify the court of *all* related cases as well as a motion for the court to stay *Holl v. Avery* pending this Court's resolution of this matter. Alternatively, this Court can order the Tribe and the federal defendants to serve the District of Alaska court with proper notice of the related case as well as this Court's order denying transfer.

[22] The same law firm represents the Alaska tribe involved in *Alaska v. Newland* and the Alaska tribe in *Holl v. Avery*. Judge Gleason's immediate family member did not participate in *Alaska v. Newland*, which is why Judge Gleason was allowed to preside over that case. *See Alaska v. Newland*, No. 3:23-cv-00007-SLG, Dkt. Nos. 13 & 14] The immediate family member does, however, represent the Tribe in *Holl v. Avery*, which

Alaska's judges are available to hear this case in conjunction with *Holl v. Avery*. So, while the State very much appreciates Judge Robart's service to Alaska (and all of the other visiting judges who have volunteered to help while the district endures two judicial vacancies), he has no greater knowledge of Alaska's specific statutes, nor does he have the "inherent authority" this Court has when it comes to enforcing the 2021 final judgment.

The last public interest factor—the relative congestion of the two courts—also does not support the Tribe's position for the same reasons discussed above. The Tribe would like to forget that it ever filed its complaint over the Ondola Allotment in 2019, and it would certainly like to forget that this Court ever reached a final decision. But that is not how things work. Courts have an interest in preserving their final judgments and res judicata "is designed to conserve judicial resources, avoid inconsistent results, engender respect for judgments of predictable and certain effect, and to prevent serial forum-shopping and piecemeal litigation." *Hardison v. Alexander*, 655 F.2d 1281, 1288 (D.C. 1981). It necessitates that "parties to a suit and their privies are bound by a final judgment and may not relitigate any ground for relief which they already have had an opportunity to litigate even if they chose not to exploit that opportunity whether the initial judgment was erroneous or not." *Id.* And, what is more, "[t]he appeal process is available to correct error; subsequent litigation is not." *Id.* The Tribe chose this forum for its prior litigation and it chose not to appeal. When it comes to enforcing that final judgment, the

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resulted in Judge Gleason recusing herself from that litigation. [*See* Exhibit G (Docket Report)]

Tribe may not engage in forum-shopping under the cover of 28 U.S.C. §§ 1406 and 1631. This Court should deny the Tribe's motion to transfer and allow the State to pursue its action to enforce this Court's final judgment.

CONCLUSION

For the foregoing reasons, this Court should deny the Native Village of Eklutna's motion to transfer. The State also requests that the Court order the Tribe and the federal defendants to serve on the assigned judge in *Holl v. Avery* (1) proper notice under District of Alaska Local Rules 3.1 and 16.1 of the related case in *Native Village of Eklutna v. U.S. Dep't of the Interior*, Case 1:19-cv-02388-DLF, and (2) this Court's order denying the Tribe's motion to transfer.

To the extent the Court deems it prudent, the State has no objection to the Court transferring this matter to Judge Friedrich. The State will file its amended complaint after receiving this Court's order on the motion to transfer.

DATED April 23, 2025.

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Certificate of Service

The undersigned certifies that on April 23, 2025, a copy of the foregoing document, **State of Alaska's Opposition to Motion to Transfer** was served via ECF on:

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/s/ Jessica M. Alloway
Jessica M. Alloway

TABLE OF EXHIBITS