THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT, *Plaintiff*, v. UNITED STATES DEPARTMENT OF THE INTERIOR, DOUG BURGUM, BRYAN MERCIER, BUREAU OF INDIAN AFFAIRS, and ERIC L. WILCOX, *Defendants.*	3:25-cv-00580-VDO JUNE 27, 2025

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR EMERGENCY STAY UNDER 5 U.S.C. § 705

The State of Connecticut ("State") renewed its Motion for Emergency Stay Under 5 U.S.C. § 705, asking the Court to grant the extraordinary relief of enjoining the United States Department of the Interior et al. ("Defendants") from taking steps mandated by law to acquire the subject parcels in trust for the Mashantucket Pequot Tribal Nation ("Tribe"). State's Motion, Dkt. 35; State's Brief, Dkt. 35-1. Defendants oppose.

A § 705 stay would prevent Defendants from acting as mandated by law and unduly prevent the Tribe from benefiting from the trust status of lands it has owned for decades—outcomes that the appliable federal regulations were designed to prevent. The State cannot demonstrate irreparable harm, likelihood of success on the merits, or that the balance of the equities and public interest tip in its favor. Thus, the State falls far short of the high bar required

to warrant the drastic relief it seeks. Defendants respectfully request that the Court deny the State's Motion.

I. APPLICABLE STANDARD

"Interim injunctive relief 'is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Master Rashid v. Pierce*, No. 23-CV-1235, 2024 U.S. Dist. LEXIS 129203, at *2 (D. Conn. July 22, 2024) (quoting *Grand River Enter. Six Nations Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)). The standard in the Second Circuit for obtaining such a remedy is black letter law:

> A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.

Daileader v. Certain Underwriters at Lloyds London Syndicate 1861, 96 F.4th 351, 356 (2d Cir. 2024) (quoting *JTH Tax, LLC v. Agnant*, 62 F.4th 658, 667 (2d Cir. 2023)). The same standard applies to a request for interim injunctive relief pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 705.

The State wrongly contends that, if a movant can demonstrate irreparable harm, the Court can issue a stay pursuant to § 705 without considering the other factors. *See* Dkt. 35-1 at 6. Every federal court of appeals to consider the question has held that the standard for a § 705 stay is the same as that for a preliminary injunction.[1] District courts in this Circuit and in every other circuit in the country have found the same. *See, e.g.*, *D'Ambrosio v. Scott*, No. 2:25-cv-468, 2025 U.S. Dist. LEXIS 103454 (D. Vt. May 9, 2025) ("Although the Second Circuit has not addressed the

[1] *AFSCME v. SSA*, No. No. 25-1411, 2025 U.S. App. LEXIS 10420 (4th Cir. Apr. 30, 2025); *All. for Hippocratic Med. v. FDA*, 78 F.4th 210 (5th Cir. 2023); *Ohio ex rel. Celebrezze v. NRC*, 812 F.2d 288 (6th Cir. 1987); *Cook Cnty. v. Wolf*, 962 F.3d 208 (7th Cir. 2020); *Colorado v. EPA*, 989 F.3d 874 (10th Cir. 2021).

issue, other courts have held that the standard for a stay under 5 U.S.C. § 705 is the same as that for a preliminary injunction.") (citations omitted). Defendants are aware of only one case in which a movant made the argument the State proffers here; the court rejected it. *Purpose Built Fams. Found., Inc. v. McDonough*, 36 Vet. App. 345, 357-58 (Vet. App. 2009).[2]

The State nevertheless insists that the APA's statutory text and legislative history support the conclusion that this Court may issue a § 705 stay "without having to analyze the other [preliminary injunction] factors." Dkt. 35-1 at 6. The statutory text does not support the State's proffered standard (nor does the State explain why it believes it does). Section 705 provides that "[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury," a reviewing court can provide relief pursuant to § 705. The statutory provision does not reference, let alone limit, the criteria that should govern a court's inquiry of whether a movant can demonstrate irreparable injury; rather, it limits the *scope* of the injunctive relief a court can provide. *See, e.g.*, *Missouri v. Biden*, 738 F. Supp. 3d 1113 (E.D. Mo. 2024) ("The Court's power under section 705 to issue a stay on agency action is limited "to the extent necessary to prevent irreparable injury."); *see also Texas v. EPA,* 829 F.3d 405, 435 (5th Cir. 2016). Had Congress intended to limit the factors a court may consider when assessing a request for a § 705 stay, it could easily have done so. It did not.

The State's appeal to legislative history of § 705 fares no better. As the Supreme Court has explained, Section 705 "was primarily intended to reflect existing law . . . and not to fashion new rules of intervention for District Courts." *Sampson v. Murray*, 415 U.S. 61, 68 n.15 (1974)

[2] In the face of a mountain of contrary precedent, the State offers one out-of-circuit, unreported case: *Wyoming v. United States DOI*, 2018 U.S. Dist. LEXIS 221809 (D. Wyo. Apr. 30, 2018). Dkt. 35-1 at 7. Not only is the case an outlier, but it was abrogated by the Tenth Circuit's 2021 decision in *Colorado*. *See* 989 F.3d at 883 ("These four [preliminary injunction] factors also determine when a court should grant a stay of agency action under section 705 of the APA.").

(citing S. Rep. No. 752, 79th Cong., 1st Sess., 27, 44 (1945)). The "existing law" at the time the APA was enacted was established by *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9-10 (1942), which held that a court's power to stay agency action is, like a court's authority to stay lower court decisions pending appellate review, part of a court's "traditional equipment for the administration of justice." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Scripps-Howard*, 316 U.S. at 9-10). In other words, in enacting § 705, Congress codified existing precedent by expressly providing courts with the authority to stay agency action. Which *criteria* apply when courts exercise that authority is a separate question. Nothing in *Scripps-Howard* or the legislative history suggests that Congress intended to establish only one criterion—irreparable harm—as grounds for granting that relief. Indeed, as the Supreme Court has explained, *Scripps-Howard* "did not decide what 'criteria . . . should govern the Court in exercising th[e] power' to grant a stay." *Nken*, 556 U.S. at 427. The modern standard establishing the *criteria* courts use when deciding whether to grant a § 705 stay is the same as that of a preliminary injunction and requires more than irreparable harm.

Thus, to obtain relief under § 705, the State must meet the same requirements necessary for a preliminary injunction. The Supreme Court established the four-factor test set forth above in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In 2010, the Second Circuit held that *Winter* did not disturb the Circuit's longstanding test, which required to show "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund, Ltd.*, 598 F.3d 30, 35-36 (2d Cir. 2010). Defendants recognize that this Court may apply the latter standard, *see Jumpp v. McKenzie*, No.

24-CV-1931, 2025 U.S. Dist. LEXIS 36528, at *5 (D. Conn. Feb. 25, 2025). Should the Court do so, Defendants maintain the Court should require the State to demonstrate (1) irreparable harm, (2) a likelihood of success on the merits and (3) that the balance of the equities tips in its favor. As set forth below, the State cannot do so.

II. ARGUMENT

The State fails to meet the requirements for a § 705 Stay because it will not suffer irreparable harm without preliminary injunctive relief, it has failed to establish a likelihood of success on the merits, and the balance of the equites of does not weigh in the State's favor.

A. The State Will Not Suffer Irreparable Harm Without a Stay.

While a demonstration of irreparable harm is not—as the State would have it—*sufficient* to warrant a stay pursuant to § 705, it is certainly *necessary* to warrant that remedy. Indeed, "[t]he Second Circuit considers a showing of irreparable harm the most important requirement for an award of preliminary injunctive relief." *Master Rashid*, 2024 U.S. Dist. LEXIS 129203, at *2 (citing *Faiveley Transport Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)). *See also New York v. U.S. Dep't of Educ.*, 477 F. Supp. 3d 279 (S.D.N.Y. Aug. 9, 2020) (identifying irreparable harm as "the single most important *prerequisite* for the issuance of a preliminary injunction) (quoting *Faiveley*, 559 F.3d at118) (emphasis added). Because the State has failed to demonstrate irreparable harm, the Court should end its analysis there and deny the State's request for a stay.

"To satisfy the irreparable harm requirement, [the State] must demonstrate that absent a preliminary injunction [it] will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *New York*, 477 F. Supp. 3d at 303 (quoting *Freedom Holdings, Inc. v. Spitzer*, 408

F.3d 112, 114 (2d Cir. 2005). "Speculative, remote, or otherwise uncertain risk of future injury is not the province of injunctive relief." *Jumpp*, 2025 U.S. Dist. LEXIS 36528, at *5 (citing *Los Angeles v. Lyons*, 461 U.S. 95, 111-12 (1983)). The bar is high: "Issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded on a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Instead, as the State concedes, there must be a "substantial chance" of irreparable harm. Dkt. 35-1 at 10 (citing to *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 80 (2d Cir. 2024)).

The State identifies three purportedly irreparable harms it will suffer if the Court denies its request for injunctive relief: (1) interference with the State's sovereign interests; (2) denial of the State's right to notice and comment; and (3) complication of judicial review. The State falls short of its burden to demonstrate irreparable harm on all three.

1. The State will not suffer irreparable harm to its sovereign interests

The "extraordinary remedy" the State seeks requires it to show harm that is "neither remote nor speculative, but actual and imminent." The State asserts that it meets that bar due to "interference with the State's sovereign interests," comprising two sub-categories of harm to the State's (1) "sovereign right to control its territory" and (2) ability "to enforce its duly enacted laws." But these alleged harms are the epitome of "remote and speculative."

The irreparable harm cases cited by Plaintiff are all inapposite. *See* Dkt. 35-1 at 10-11, n.9. In each of these cases, the state seeking injunctive relief identified *specific*, *concrete* harms arising from the alleged loss of state sovereignty. In *Kentucky*, EPA's denial of Kentucky's state implementation plan under the Clean Air Act precluded the state from regulating emissions in accordance with its own plan (as authorized under the cooperative federalism framework of the

Act). *Kentucky v. United States*, Nos. 23-3216/3225, 2023 U.S. App. LEXIS 18981, at *11–12 (6th Cir. July 25, 2023). In *North Dakota*, the Bureau of Land Management's ("BLM") regulations governing oil and gas drilling undermined the State's ability to regulate air quality within state borders. *North Dakota v. U.S. Dep't of Interior*, No. 1:24-cv-00066, 2024 U.S. Dist. LEXIS 164665, at *24 (D.N.D. Sep. 12, 2024). And in *West Virginia*, EPA's enforcement of a new "waters of the United States" rule would have allowed the federal government to regulate waters that, but for the rule, would be subject to state regulation. *West Virginia v. U.S. EPA*, 669 F. Sup. 3d 781, 807 (D.N.D. 2023). In other words, absent preliminary relief, the state movants in *Kentucky*, *North Dakota*, and *West Virginia* would have been precluded from enforcing state regulatory frameworks that the state would otherwise enforce. Similarly, in *Kansas*, the Tenth Circuit explained that "the State of Kansas' interests in adjudicating the applicability of [the Indian Gaming Regulatory Act ("IGRA")], and the ramifications of such adjudication, are sufficient to establish the real likelihood of irreparable harm if the Defendants' gaming plans go forward at this stage of the litigation." *Kansas v. United States*, 249 F.3d 1213, 1228 (10th Cir. 2001). IGRA requires states to negotiate with tribes that satisfy the requirements for Class III gaming in an effort to agree on the terms of a gaming compact. If a state refuses to do so, it can be subject to suit by the tribe under IGRA, and ultimately the Secretary of the Interior can approve Class III gaming over the objections of a state if the state and tribe are unable to reach a compact agreement. In other words, had the court not enjoined the government from acting on the agency's "Indian lands" determination (a prerequisite for engaging in Class III gaming), the state would have been required to begin compact negotiations with the tribe or risk the consequences.

Here, Connecticut does not allege that acquisition of the land in trust during litigation will prevent the State from exercising its sovereign authority in any specific, concrete way. Unlike the cases discussed above, the State has not identified a new regulatory framework (like BLM's flaring rule) that would displace the State's. And unlike *Kansas*, acquisition of the lands in trust will not require the State to take any action it would not otherwise take. While the State cites generally to the type of background regulatory authority it has over the subject parcels while they are not in trust—i.e., authority over ATV use and wetlands—it does not claim that any efforts to enforce those laws or regulations will be stymied if the land is taken in trust. To Defendants' knowledge, the Tribe has not and is not using or allowing others to use ATVs on the property in a manner inconsistent with State law, nor has the State expressed any concern that the Tribe would do so once the land is in trust. The same is true for the existence of wetlands on the property; the State does not allege that the Tribe is managing the wetlands in a manner inconsistent with State law, nor does it have any reason to believe the Tribe would do so if the land were in trust status. Thus, the State's claims of irreparable harm arising from a loss of sovereignty are entirely speculative because it has not identified any exercise of its sovereign authority that, but for the acquisition of the land in trust, it would wish to take.

The State's reliance on *Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013), is also misplaced. The circumstances in that case are entirely distinguishable, as some brief background illustrates. For a full account of the history of the Department's position on trust acquisitions in Alaska, see *Alaska v. Newland*, No. 3:23-cv-00007, 2024 U.S. Dist. LEXIS 112920, at *7-15 (D. Alaska June 26, 2024). In relevant part: For years after enactment of the Alaska Native Claims Settlement Act ("ANCSA"), Interior incorrectly maintained that ANCSA precluded the Secretary of the Interior from acquiring land in trust for federally recognized tribes

in Alaska. *Id.* at *7. When Interior issued its fee-to-trust regulations in 1980, it specifically excluded Alaska (the "Alaska exception"). Interior began to reconsider that position in the mid-1990s, *id.* at *8, but by 2014 had not taken action to remove the Alaska exception from its regulations. *Id.* at *8-9. In 2006, several tribes in Alaska sued the United States for leaving the Alaska exception in place, preventing tribes from applying to have land acquired in trust on their behalf. *Id.* at *9-10. The district court ruled in the tribes' favor, concluding that the Secretary retained authority to acquire land in trust for tribes in Alaska after ANCSA and invalidating the Alaska exception in Interior's regulations. *Akiachak*, 935 F. Supp. 2d 195.

The State appealed to the D.C. Circuit and requested a stay pending appeal of the district court's order invalidating the Alaska exception (i.e., seeking to prevent the 229 tribes in Alaska from petitioning to have lands acquired in trust). Further, while the State's appeal was pending, Interior promulgated a new rule removing the Alaska exception from its regulations. In its order granting the State's request to enjoin Interior from acquiring land in trust pending appeal, the court concluded that a stay was "necessary to prevent the irreparable harm to state sovereignty and state management of land that will befall Alaska if state land begins to be taken into trust for the Tribes." 995 F. Supp. 2d at 17. On the table in that case was the potential acquisition of lands in trust across Alaska for hundreds of tribes amid a major regulatory change. While Defendants maintain that any harm to Alaska could have been remedied through the judicial process, *see Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak,* 567 U.S. 209, 220-21 (2012) ("*Patchak*"), rendering injunctive relief unnecessary in *Akiachak*, it is not surprising that a court issued that extraordinary remedy given the circumstances.

No such circumstances are present here. This case does not present the possibility of hundreds of tribes in Connecticut suddenly asking Interior to acquire land in trust, thus

(arguably) having a widespread effect on State sovereignty. To the contrary, there are two small parcels at issue here and, as explained above, if those parcels are acquired in trust during this litigation, the Court will retain jurisdiction to issue any appropriate remedy if it finds that the Decisions were issued in error. *See Patchak*, 567 U.S. 209.[3] Further, the prospect of trust acquisitions in Alaska represented a fundamental change in the State; prior to the acquisition in trust of a parcel of land for the Craig Tribal Association in 2017, only three tribes in Alaska had land held in trust (and those lands were acquired prior to ANCSA). Here, Connecticut is no stranger to trust and reservation lands. At the time the Tribe filed applications for the parcels at issue here, its reservation consisted of approximately 1,635 acres held in trust. Acquisition of an additional 80 acres contiguous to the Tribe's existing reservation simply does not present the same situation as *Akiachak*. Even if Alaska plausibly faced an existential threat to its sovereignty in *Akiachak* (which Defendants dispute), Connecticut faces no such threat here.

The State's related argument that it will be unable to enforce its laws suffers from the same fatal flaw: The State has not identified any laws that it would—but for the parcels being acquired in trust—seek to enforce. The mere existence of state laws that *could* be enforced establishes, at best, speculative harm—not actual and imminent harm. The State relies on cases that do not support its position. For instance, in *Maryland v. King*, the Supreme Court stayed a lower court's ruling that a Maryland law authorizing law enforcement officials to collect DNA samples from people charged with certain crimes violated the Fourth Amendment. The Court held that the lower court's decision "subjects Maryland to ongoing irreparable harm" and that "in

[3] Further, when the D.D.C. issued the preliminary injunction in *Akiachak*, the post-*Patchak* regulations had only been in place for about six months. If *Akiachak* were litigated today, perhaps that court would have held that irreparable harm would not ensue if the land was acquired in trust during litigation.

the absence of a stay, Maryland would be disabled from employing a valuable law enforcement tool for several months." 133 S. Ct. at 3. Maryland sought a stay of the lower court decision because it wanted to continue using the DNA law, rendering the harm to the State from the lower court's decision immediate and actual. Here, Connecticut has not identified any analogous law that it wants to enforce but will be unable to if the land is acquired in trust.

None of the other cases Plaintiff cites are helpful to its argument either. In *New York v. Shinnecock Nation*, New York requested that the court enjoin the tribe from building a casino, which the tribe planned to begin "immediately." 280 F. Supp. 2d 1, 5 (E.D.N.Y. 2003). In granting the injunction, the court explained that without an injunction, the tribe would proceed with its plans to build a casino without abiding by state and local environmental regulations and in alleged violation of the State's anti-gambling laws. Similarly, in *Ysleta*, the district court held that without an injunction, Texas would have been unable to enforce specific state gaming laws that it otherwise would seek to enforce. 2019 U.S. Dist. LEXIS 24423, at *32 (W.D. Tex. Feb. 14, 2019). Thus, unlike here, New York and Texas both identified specific laws that, absent a stay, the states would not be able to enforce.

The State alleges in passing that it would also suffer irreparable harm because it would be unable to tax the land. But in Connecticut, local municipalities, not the State, are primarily responsible for administering and collecting property taxes. The State does not claim that it—as opposed to the Town of Ledyard—has ever levied a tax on these properties or that it would plan to do so absent a stay of the acquisitions. It is therefore questionable whether the State can impute alleged harm to one of its municipalities to itself. But even assuming the State can do so, a loss of tax revenue is a purely economic harm and, as this Court has explained, "[c]ourts usually decline to find irreparable harm when plaintiffs allege merely an economic harm," since

such harm "can be estimated and compensated." *Psara Energy, Ltd. v. Space Shipping Ltd.*, 2017 U.S. Dist. LEXIS 214697 (D. Conn. Nov. 30, 2017).

2. The State will not suffer irreparable harm to any procedural right

The State also claims that Defendants' alleged denial of the State's rights to notice of the Tribe's applications and an opportunity to comment on them constitutes irreparable harm. Dkt. 35-1 at 12-16. But even assuming the State had and was deprived of any regulatory procedural rights under Interior's "rule and policy," the APA, or the Constitution, *see* Dkt. 35-1 at 13, that constitutes at best a past injury, which occurred when the Regional Director issued the challenged Decisions without considering the State's untimely comments. "Injunctive relief may not be granted on the basis of a plaintiff's past injury; rather a plaintiff must show a likelihood of future injury." *Pincus v. AMTRAK*, 581 Fed. Appx. 88, 89 (2d Cir. 2014). "[T]he identified injury must still be continuing or imminent . . . to be considered truly irreparable for the purposes of granting a preliminary injunction." 2008 U.S. Dist. LEXIS 135113; *see also Farmland Dairies v. McGuire*, 789 F. Supp. 1243, 1250 (S.D.N.Y. 1992) ("To obtain injunctive relief based on past injury, the plaintiff must show a real and immediate threat that the injury will be continued or repeated.") The only two cases the State cites to—*Strouchler v. Shah*, 891 F. Supp. 2d 504, 521 (S.D.N.Y. 2012) and *Kansas Health Care Assn. v. Kansas Dept. of Social & Rehabilitation Services*, 31 F.3d 1536, 1545 n.17 (10th Cir. 1994)—both featured alleged *ongoing* harm to the movant and are therefore inapposite.[4]

[4] Plaintiffs in *Strouchler,* recipients of 24-hour continuous care services, sought a preliminary injunction preventing defendant Medicaid providers from reducing or terminating services without adequate notice. At the plaintiffs moved for injunctive relief, the providers were not providing notice; thus, the harm was ongoing. In *Kansas Health Care Ass'n*, plaintiff, a nursing home trade association representing nursing homes, alleged ongoing harm caused by application by the state of Kansas of a reimbursement rate plaintiff deemed inadequate.

The State does not explain how Interior's lack of consideration of its comments continues harm to the State now, or how issuance of a § 705 stay would remedy that harm. Even if the court were to grant the requested stay, the agency's proceedings concerning the Decisions have already concluded. The Decisions, as affirmed by the AS-IA, constitute final agency action and are currently subject to judicial review in this Court. Ultimately, any harm arising from the alleged procedural violations is not irreparable because there is an adequate legal remedy available: Should the State prevail on the merits of its procedural claim, this Court could remand the decision to the agency. Such recourse would adequately redress any harm caused to the State by the alleged procedural violations. For that reason, the harm is not irreparable.

3. The State will not suffer irreparable harm due to "complicating judicial review"

Finally, the State alleges that it will be irreparably harmed without a stay because acquisition of land in trust during this litigation would "unnecessarily complicat[e] the State's ability to obtain judicial review of the Decisions." Dkt. 35-1 at 16-22. Not so. The State spends three pages, *id.* at 17-19, narrating the history of the Department's past positions on the implications of the acquisition of land in trust for the benefit of a tribe. It is true that litigation beginning in the late 1990s and concluding with the Supreme Court's decision in *Patchak v. Salazar* in 2013 led to a change in the Department's position regarding the availability of judicial review once land is in trust. But that history, while interesting, has no bearing here.

The State speculates that without a stay, "Defendants may argue that *Patchak* is distinguishable and sovereign immunity will bar this case when Defendants take title." *Id.* at 19. Defendants will do no such thing, nor has Plaintiff provided any evidence to the contrary. Plaintiff has not identified a single post-*Patchak* case in which the United States has argued that the acquisition of land in trust would render an agency decision immune from judicial review. In

fact, the United States has consistently opposed preliminary injunction requests on precisely this basis: that a reviewing court retains jurisdiction to craft an appropriate remedy despite land being held in trust.[5] Nevertheless, the State baselessly suggests that the United States plans to trick the Court into denying injunctive relief only to turn around and claim that the challenged decisions are unreviewable. To be clear: if Defendants acquire the subject parcels in trust during this litigation, the United States will not argue that the challenged Decisions are no longer subject to this Court's review.[6]

For good reason, courts have routinely denied requests to enjoin Interior from acquiring land in trust or to require Interior to take land out of trust on the grounds that judicial review can occur while land is in trust. *See, e.g.*, *Cow Creek Band*, 2025 U.S. Dist. LEXIS 29666;

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[5] *See* the following briefs filed by the United States from 2013 (the year *Patchak* was decided) through 2025: Defendants' Opposition to Plaintiff's Request for a Temporary Restraining Order, *Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty v. Salazar* No. 2:12-CV-3021-JAM-AC, 2013 WL 417813 (E.D. Cal. Jan. 30, 2013); United States' Response to Plaintiff's Motion for Preliminary Injunction, *Stand up for Cal.! v. U.S. Dep't of Interior*, 919 F. Supp. 2d 51 (D.D.C. 2013) (No. 1:12-cv-02039); United States' Response to Plaintiffs' Motion for Preliminary Injunction, *Town of Verona v. Jewell*, No. 08-cv-0647, 2014 WL 12894093, at *3 (N.D.N.Y. Aug. 12, 2014); United States' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction or Writ, *Littlefield v. U.S. Dep't of Interior*, 199 F. Supp. 3d 391 (D. Mass. 2016) (No. 16-10184); Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, *Cow Creek Band of Umpqua Tribe of Indians v. U.S. Dep't of Interior*, No. 24-cv-03594, 2025 U.S. Dist. LEXIS 29666 (D.D.C. Feb. 19, 2025); Defendants' Response to Plaintiff's Motion for a Preliminary Injunction, *Federated Indians of Graton Rancheria v. Haaland*, No. 3:24-cv-8582 (N.D. Cal. filed Jan. 2, 2025); United States' Opposition to Plaintiff's Civil L.R. 7(h) Expedited Non-Dispositive Motion for Emergency Limited Stay of Administrative Actions, *Village of Hobart v. U.S. Dep't of Interior*, No. 1:23-cv-01511 (E.D. Wis. filed June 5, 2025).

[6] Of course, a challenged fee-to-trust decision may not be subject to judicial review for entirely separate reasons—e.g., if the reviewing court dismisses the case under Fed. R. Civ. P. 12 or other authority. But the assumption underlying a motion for injunctive relief is that the case will proceed to a resolution of the merits such that any appropriate remedy may be issued in accordance with the merits decision. Defendants expect that will happen here. The possibility that a challenged decision is not subject to judicial review because the case might be dismissed on other grounds is irrelevant to the instant question: whether the Court should issue a § 705 stay pending resolution of this case.

Crawford-Hall v. United States, No. 2:17-cv-1616, 2018 U.S. Dist. LEXIS 226889 (C.D. Cal. May 31, 2018); *Town of Verona*, 2014 U.S. Dist. LEXIS 202575; *Stand up for Cal*, 919 F. Supp. 2d 51; *Cachil Dehe Band*, 2013 WL 417813. The Court should do the same here.

The State also argues that a stay is necessary to avoid "practical obstacles at the end of the litigation that could be avoided." Dkt. 35-1 at 20. Specifically, the State argues that tribal sovereign immunity could bar this Court from ordering the Tribe to "remove equipment or structures it puts on the land" and that the Tribe can "alter" the parcels as soon as they are in trust. *Id.* But the mere possibility of jurisdictional compilations that *could* arise falls far short of the specific, immediate harm required. And, critically, the State is engaging in pure speculation—first, that the Tribe will, despite its representations that it has no plans to change the use of the property, put any equipment or structures on the land or alter the land in any way after the land is acquired in trust; and second, that any such additions or alterations would constitute harm to the State. Such speculative harm cannot support injunctive relief. With respect to the State's concern that it will be unable to recover damages stemming from tax losses, as discussed above, the State does not identify any tax it would seek to levy on the parcels, rendering any concern on this front entirely speculative.

Finally, the State again points to *Akiachak* in support of its contention that this Court should issue a stay to prevent "confusion and chaos." Dkt. 35-1 at 21; *see Akiachak Native Cmty. v. Jewell*, 995 F. Supp. 2d 7 (D.D.C. 2014). As discussed above, the circumstances in *Akiachak* are unlike those here. In granting injunctive relief, the district court in *Akiachak* cited the possible difficulty of unwinding fee-to-trust in Alaska if tribes across the state began petitioning for trust acquisitions for the first time. Here, Interior is seeking only to complete the ministerial steps to acquire two small parcels in trust in a State that already has thousands of acres of trust

land, including on the Tribe's adjacent reservation. The notion that "confusion and chaos" would reign were Interior to acquire these parcels in trust during this litigation beggars belief.

B. The State Has Not Demonstrated Likelihood of Success on the Merits.

The State fails to meet the high bar of demonstrating likelihood of success on the merits and is thus not entitled to the extraordinary remedy of a preliminary injunction.[7]

Where, as here, "the movant seeks to enjoin action taken pursuant to a statutory or regulatory scheme, the injunction should be granted only if the movant meets 'the more rigorous' likelihood-of-success standard." *Conn. State Police Union v. Rovella*, 494 F. Supp. 3d 210, 218 (D. Conn. 2020) (citing *Trump v. Deutsche Bank AG*, 943 F.3d 627, 637, 639 (2d Cir. 2019), *rev'd on other grounds sub nom. Trump v. Mazars USA, LLP*, 591 U.S. 848 (2020) (collecting cases). The rationale behind this "exception" to the alternative "serious-questions" standard "reflects the idea that governmental policies implemented through legislation . . . are entitled to a higher degree of deference and should not be enjoined lightly." *Id.* at 219. Here, Interior acted pursuant to a statutory scheme, 25 U.S.C. § 5108, and a regulatory scheme, 25 C.F.R. Part 151. Further, the action Interior seeks to take—acquisition of the parcels in trust for the Tribe—is mandatory. The applicable regulation, 25 C.F.R. § 151.12(d)(2)(iv), requires Interior to "immediately acquire the land in trust . . . upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies." Administrative remedies were exhausted when the former Assistant Secretary–Indian Affairs ("AS-IA") issued a final decision affirming the Regional Director's Decisions. *See* Dkt. 1-1 at A-158. Interior is under an ongoing regulatory

[7] The State does not mention the second cause of action articulated in its Complaint ("Section 5 of the IRA is an Unconstitutional Delegation of Authority"). Defendants preserve the right to respond to the merits of the State's nondelegation argument, should the State pursue that argument in summary judgment briefing, and to advance additional merits arguments on the issues raised in the State's Motion.

obligation to take immediate steps to acquire the land in trust. To warrant this Court enjoining Interior from fulfilling that obligation, the State must demonstrate a likelihood of success on the merits.

It is not clear from the State's § 705 motion whether it believes, should this Court consider factors aside from irreparable harm, that it could prevail by meeting the lower "serious questions" standard. While the State contends that "the likelihood of success on the merits . . . warrant[s] a stay," Dkt. 35-1 at 22, it references "serious questions" throughout its brief, e.g., maintaining that a stay is warranted because "the State raises serious questions about the Secretary's authority," *id.*, and "whether its rights to notice and comment were violated," *id.* at 35. To the extent the State advocates for application of the lesser "serious questions" standard, this Court should reject that argument and require the State to meet the more rigorous standard of demonstrating a likelihood of success on the merits.

1. The State does not demonstrate likelihood of success on its procedural claim.

The State claims that it has a procedural right to "notice and comment" under Interior's "rule and policy," the APA, and the Constitution. Dkt. 35-1 at 13.[8] The State alleges three errors on the part of the Regional Director: (1) failure to notify the Connecticut Attorney General specifically of the notices of applications; (2) treating the confirmation of delivery of the notices as a "conclusive presumption" of receipt; and (3) "ignoring" the State's purported evidence that it had rebutted the presumption of receipt. Dkt. 35-1 at 35-36. Regardless of the source of the

[8] As a threshold point, "notice and comment" rulemaking is a term of art inapplicable to the administrative proceedings here. Agency actions that constitute "rules" must go through notice and comment. 5 U.S.C. §§ 553(b), (c). The Decisions are informal adjudications, not rules subject to the notice-and-comment requirement, nor does the State claim that they are.

procedural right, the State does not meet its burden to demonstrate likelihood of success on the merits of its procedural claim.

a. The Regional Director properly notified the State of the Tribe's applications.

The regulations effective when the Regional Director mailed the notices of application to the State required the Regional Director to "notify the state and local governments having regulatory jurisdiction over the land to be acquired" and, in that notice, to "inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments."[9] 25 C.F.R. § 151.10 (2023). At most, then, the regulations required BIA to mail a notice to the State to give the State an *opportunity* to comment on the Tribe's applications; they did not require BIA to notify the State Attorney General specifically or any other specific official. Moreover, nothing in the regulatory text grants the State any enforceable "right" to comment on applications; just the opportunity to do so in a timely manner. The State's argument that the Regional Director erred by not providing notice specifically to the State Attorney General is without merit.

b. The Regional Director and the AS-IA properly concluded that the State received the notices of application and that the State did not respond within 30 days.

The gravamen of the State's procedural complaint is that the Regional Director did not consider comments sent on May 24, 2024, nearly six months after the 30-day comment period

[9] In December 2023, Interior promulgated revised regulations, which took effect on January 11, 2024. *See* Land Acquisitions, 88 Fed. Reg. 86,222, 86,222-55 (Dec. 12, 2023). For applications pending at that time, like the Tribe's applications here, the new regulations offered applicants the option to request to proceed under the revised regulations. *Id*. at 86,230. The Tribe did not opt to proceed under the revised regulations. References herein are thus to the prior regulations that were applied in the Decisions.

closed on December 7, 2023. The Regional Director sent the notices of application to the Governor at his correct business address, 210 Capitol Street in Hartford, where they were signed for by "M. Estrada," identified by the State as "Manual" or "Manuel" Estrada, who works in the mailroom at the Connecticut State Capitol, where the Governor's office is located. *See* Dkt. 1-1 at A-068, A-071.

As the State acknowledges, it did receive notice of the Tribe's application requesting acquisition in trust of a nearby parcel, 153 Indiantown Road (Case No. 55848). *See* Dkt. 35-1 at 4 n.6. What the State does not mention is that, like the notices of application at issue here, the notice for No. 55848 was also addressed to the Governor at 210 Capitol Street and was also signed for by "M. Estrada."[10] That is, the Regional Director sent notices to the Governor at his business address, they were signed for by an employee in the mailroom, and they were acknowledged as received. Despite the State's protestation about Mr. Estrada's authority to accept such notices, that notice of application was signed for on March 27, 2024, and received by the Governor's office a few days later on April 1, 2024. Dkt. 1-1 at A-069 ¶15. And as the State concedes, subsequent correspondence from Defendants (including correspondence pertaining to the State's extension requests) reached its intended recipient and was signed for by "M. Estrada." Dkt. 1-1 at A-130-31.

BIA reasonably relied on the FedEx delivery receipt as evidence that the State had received notice of the Tribe's applications. Under the so-called "'mailbox rule,' a letter shown to be properly addressed and mailed raises a rebuttable presumption of receipt." *Claude v. Wells*

[10] Defendants ask that the Court take judicial notice of the FedEx delivery confirmation, attached as Exhibit 1, pursuant to Fed. R. Evid. 201. *See, e.g.*, *NYKCool A.B. v. Pac. Int'l Servs., Inc.*, No. 12-cv-5754, 2013 U.S. Dist. LEXIS 179075, at *6 n.8 (S.D.N.Y. Dec. 20, 2013) (taking judicial notice of FedEx tracking information from the FedEx website).

Fargo Bank, N.A., No. 3:13-cv-00535, 2015 U.S. Dist. LEXIS 133142, at *26 (D. Conn. Sept. 30, 2015). For administrative decision-making to function, assumptions like that embodied by the "mailbox rule" are necessary for the sake of efficiency and the provision of government services. As the AS-IA explained, if a particular State official did not receive the notices after they were delivered, it was due to a "breakdown" that occurred in after the notices were received in the State's mailroom. To effectively penalize BIA for an error committed by a State employee responsible for the mail at the State building "would lead to twisted results that would frustrate these and future BIA decisions." Dkt. 1-1 at A-168. Further, the incidence of that frustration and delay would fall on tribes, for which the acquisition of land in trust is a critical aspect of self-governance and self-determination. The mailbox rule serves as a reasonable bright-line rule that balances the importance of notice to governments against undue delay in agency decision-making. And the presumption embodied by the rule is even stronger—and thus harder to rebut—when correspondence is not only properly addressed and mailed, but *actually received*, as is the case here, where there is receipt evidence that someone at the address to which the notices were sent signed for them.

The AS-IA properly found that the State failed to rebut that presumption here. *See* Dkt. 1-1 at A-166-68. In weighing the evidence provided by the State that it did not actually receive the notices of appeal and the evidence provided by the Regional Director showing that other correspondence addressed to the Governor and signed by M. Estrada, the AS-IA reasonably concluded that the State had failed to rebut the presumption. *Id.* Further, under the agency's precedent, while "[t]here is a rebuttable presumption that notice sent to a party at his or her last known address and not returned has been received the presumption of receipt established by a delivery receipt may be rebutted," *Estate of Beverly M. Howard*, 55 IBIA 300, 303, 2012 I.D.

LEXIS 92 (2012), the State failed to rebut that presumption here. "To rebut the presumption [of receipt, a] party must show that the address used was not his or her current address *and* specifically contest receiving notice." *Id.* at 303 (emphasis added). While the State contests receipt, it does not claim that the notices were mailed to the wrong address.

In sum, the Regional Director acted in accordance with the governing regulations, the APA, and the Constitution. The regulations required only that BIA provide notice of the application to the State, giving the State the opportunity to submit timely comments. BIA complied with this requirement. It is not BIA's error that the State's mailing address would sometimes, but not always, work to get the notice to a particular state official.

c. Any alleged procedural violation is harmless error.

Even if the Regional Director committed any of the procedural errors the State alleges—which she did not—any such error should be deemed harmless for two reasons. First, the Regional Director considered the State's substantively identical (but timely) comments prior to issuing a decision acquiring a nearby property in trust and approved the Tribe's application. Even if the Regional Director had considered the State's comments prior to issuing the decisions at issue here, she presumably would have reached the same conclusion. The Regional Director issued the decisions at issue in this litigation in August 2024. In September 2024, the Regional Director issued a companion decision approving the Tribe's request for Interior to acquire the nearby153 Indiantown Road parcel (Case No. 55848) in trust for the Tribe. *See* Dkt. 1-1 at A-267. The State's administrative appeal of that decision is currently pending before the Interior Board of Indian Appeals ("Board"). Despite the fact, discussed above, that the notice of application for 153 Indiantown Road was also delivered to the Governor and signed for by "M. Estrada," the State managed to file its comments on 153 Indiantown Road within the 30-day period set by the regulations. *See* Dkt. 1-1 at A-073. The State incorporated those comments and

supporting documents for the Regional Director's consideration of the acquisition of the two parcels at issue here. *Id.* at A-065. In her decision approving the Tribe's application for 153 Indiantown Road, the Regional Director addressed the State's comments, including statutory authority. *See* Dkt. 1-1 at A-267. The comments the State submitted, as well as the issues the Regional Director considered, were the same in 153 Indiantown Road as in the two parcels at issue here. Therefore, even if the Regional Director had considered the State's untimely comments prior to issuing the challenged decisions, the Regional Director would presumably have approved the applications as it did after consideration of the State's comments on 153 Indiantown Road. Ultimately, the Regional Director simply disagreed with the State's legal position. That disagreement does not constitute error.

Second, in briefing in the administrative appeal proceedings before the AS-IA, the Regional Director considered and fully addressed in briefing the State's procedural and substantive concerns. That may seem to the State like too little, too late. But the proceedings before the AS-IA were still agency proceedings, and had the Regional Director been convinced that any of the State's comments warranted reconsideration of the decision, she could easily have requested a voluntary remand. BIA regularly requests voluntarily remands from the Board. *See, e.g.*, *Village of Hobart v. Acting Midwest Reg'l Dir.*, 67 IBIA 225, 225, 2020 I.D. LEXIS 126 (2020) (granting a regional director's request for a voluntary remand of a fee-to-trust decision). Instead, having considered the State's arguments, the Regional Director in briefing before AS-IA fully responded to those comments and defended the decision to acquire the land in trust. The Regional Director's consideration during the proceedings before AS-IA cures any alleged procedural defect arising from the Regional Director's decision not to consider the State's untimely comments during the initial decision-making process.

Accordingly, even if the Court finds error in the agency's process, it should conclude it was harmless and thus fails to demonstrate a likelihood of success on the merits of its procedural claim to warrant the extreme remedy sought here.

2. The State has not established likelihood of success on the merits on its statutory authority claims.

Section 9 of the Settlement Act, entitled "Extension of Federal Recognition and Privileges," states that "[e]xcept as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe." Pub. L. No. 98-134 (1983), § 9(a). Section 9 thus extends all generally appliable statutes to the Tribe that are not inconsistent with the Settlement Act. This includes the Indian Reorganization Act, 25 U.S.C. § 5101 *et seq.* ("IRA"). The State's attempts to limit the effect of Section 9 and the application of the IRA to the Tribe all fail. Because the State does not—and cannot—demonstrate a likelihood of success on the merits, the Court should deny the State's motion for a § 705 stay.

a. Interior did not err in relying on the IRA as statutory authority for its Decision, nor is it "disclaiming" the IRA as statutory authority in favor of the Settlement Act.

The State wrongly suggests that the Regional Director "shifted her position" during the administrative appeal before the AS-IA from reliance on the IRA as statutory authority for the acquisition to reliance on the Settlement Act. Dkt. 35-1 at 22-24. The State presents a false dichotomy. To be sure, the IRA provides the actual statutory authority for the acquisition. *See* 25 U.S.C. § 5108 (authorizing the Secretary to acquire lands in trust for the purpose of providing land for Indians). As discussed below, the Settlement Act is the vehicle that extended the IRA to the Tribe; it is not in itself an independent source of statutory authority for the trust acquisitions

at issue here. The Regional Director's identification in the Decisions of the IRA as the source of statutory authority is therefore accurate. *See* Dkt. 1-1 at A-108; A-118. Nothing in the regulations requires the Regional Director to provide a detailed legal explanation as to *why* the IRA applies to a particular acquisition (i.e., here, why the Settlement Act extends the IRA to the Tribe).

What the regulations do require is for Interior to "consider . . . [t]he existence of statutory authority for the acquisition and any limitations contained in such authority." 25 C.F.R. § 151.10(a) (2023). Absent evidence that the Regional Director failed to consider the materials properly before her—which the State does not allege—this Court should assume the Regional Director did so. "[A]gency action is entitled to a presumption of regularity," and courts should "thus presume [an] agency has considered all the evidence and properly discharged its duties" absent evidence to the contrary. *NLRB v. Newark Elec. Corp.*, 14 F.4th 152, 163 (2d Cir. 2021). Here, the record will demonstrate that the Regional Director considered the question of statutory authority and, in doing so, considered the relationship between the IRA and the Settlement Act. Specifically, the Regional Director considered the Tribe's applications, which described why, in the Tribe's view, the Settlement Act extended the IRA's trust acquisition authority to the Tribe. *See* Dkt. 1-1 at A-004-05. Thus, the State's contention that the Regional Director "shifted position" from the IRA to the Settlement Act as the source of statutory authority is not only unsupported by the record, it is nonsensical: the Settlement Act extended the IRA to the Tribe, and this extension of IRA authority was properly invoked in tandem with the IRA to provide authority for the acquisitions at issue here.[11]

[11] As discussed at length in *Connecticut ex rel. Blumenthal v. U.S. Dep't of Interior*, 228 F.3d 82 (2d Cir. 2000), the Settlement Act did direct the Secretary to acquire in trust any lands purchased with Settlement Act funds situated within a certain geographic area described in the Act. 228 F.3d at 86-87. For such acquisitions, the Settlement Act is the direct statutory authority. But

Once the State administratively appealed the Regional Director's Decisions to the Board, and after the AS-IA assumed jurisdiction over such administrative appeal, the Regional Director explained in briefing before the AS-IA the consideration she conducted prior to issuing the Decisions. *See* Dkt. 1-1 at A-126 (Regional Director's AS-IA brief). In that brief, the Regional Director offered a fulsome explanation of her consideration of statutory authority, *id.* at A-132-39, concluding that "Section 9 of the Settlement Act *makes the IRA applicable* to the Tribe," *id.* at A-139. The Regional Director did *not* alter his position that the IRA is the source of the statutory authority for these acquisitions: "[T]he Regional Director may take land in trust for the Tribe through the land acquisition authority found in Section 5 of the IRA." *Id.*

The State tries here to hang its hat on the fact that the Regional Director did not include in the Decisions an explanation as to why the Settlement Act extends the IRA to the Tribe. Its effort fails. As required by § 151.10(a), the Regional Director considered the existence of statutory authority for the acquisition—including the relationship between the Settlement Act and the IRA. The Regional Director did not "realize [her] mistake," "backtrack," or "implicit[ly] admi[t] that she lacked statutory authority" during briefing before the AS-IA. *See* Dkt. 35-1 at 16, 24. Nor did the Regional Director engage in post-hoc rationalization during the appeal before the AS-IA. *See* Dkt. 35-1 at 23. To the contrary, the Regional Director *explained* her consideration of the statutory authority question for the benefit of the AS-IA's review on appeal. Providing an explanation for the agency's decision during the course of administrative proceedings is not post-hoc rationalization.

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here, for lands acquired with non-Settlement Act funds outside of the statutorily defined area, the IRA, as extended to the Tribe by the Settlement Act, authorizes the acquisition.

Finally, the Regional Director in its briefing before the AS-IA fully explained why the Settlement Act extends the IRA to the Tribe before final agency action (i.e., a decision by the AS-IA) was taken. Therefore, even *if* this Court were to find that the Regional Director's Decisions could have stated more precisely that the Settlement Act is the vehicle that apples the IRA to the Tribe, any error on the Regional Director's part was cured by her thorough explanation in briefing before the AS-IA. The State's formalistic arguments on these points find no support in administrative law, which recognizes that a reviewing court must "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 513-14 (2009). This Court should therefore reject any argument that Interior is somehow precluded from arguing here that the Settlement Act extended the IRA to permit the Secretary to acquire land in trust for the Tribe.

b. The Second Circuit has held the Settlement Act does not supplant the Secretary's authority under IRA Section 5.

The Second Circuit has already rejected the State's attempts to use the Settlement Act as a shield against trust acquisitions for the Tribe. *Connecticut ex rel. Blumenthal v. U.S. Dep't of Interior*, 228 F.3d 82 (2d Cir. 2000). *Blumenthal* considered whether Section 5 of the Settlement Act precluded the Secretary from taking into land into trust when the land was purchased with non-settlement funds and located outside of the Settlement Act's defined lands. In the district court, the State contended that the Settlement Act was designed to be a "final, consensual settlement of a broad range of issues between the State and the Tribe, including competing claims of territorial sovereignty," such that additional acquisitions would be contrary to the Settlement Act. *Connecticut ex rel. Blumenthal v. Babbitt*, 26 F. Supp. 2d 397 (D. Conn. 1998), *rev'd and remanded sub nom. Blumenthal*, 228 F.3d 82.

The Second Circuit reversed, rejecting the State's arguments and concluding, "[t]he Settlement Act was not . . . a comprehensive statute intended to settle once-and-for-all the extent of the Mashantucket Pequot's sovereignty." *Blumenthal*, 228 F.3d at 90. *Blumenthal* noted the congressional findings in the Settlement Act suggest a "more parochial" impetus than the State contended: a means to end protracted controversy over specific parcels of land. Inexplicably, the State now points to this language to argue the Settlement Act's purpose was so narrow that it could not have extended the IRA to the Tribe. *See* Dkt. 35-1 at 34-35. This argument is not only a tortured reading of the Settlement Act, *see infra*, Section II.B.2.c, but is in direct conflict with *Blumenthal*. The Second Circuit held that the Settlement Act does not preclude the Secretary from acquiring land in trust. *Blumenthal*, 228 F.3d at 88 ("Nothing in [Settlement Act Section 5] supplants the Secretary's power under the IRA to take into trust lands acquired without the use of settlement funds."); *id.* at 90 ("Nothing in the Act indicates that Congress intended to establish the outermost boundaries of the Tribe's sovereign territory."); *id.* at 91 ("Nothing in the Settlement Act's legislative history compels a different conclusion than the one we reach.").

The State ignores this binding Second Circuit precedent. In its stay motion, the State expends a mere twenty-two words to distinguish *Blumenthal*: "Other aspects of the Second Circuit's decision were undermined by the Supreme Court's subsequent decisions in *Carcieri* and *Loper Bright*, among others." Dkt. 35-1 at 34 n.24. To demonstrate likelihood of success on the merits of an argument that is foreclosed by binding precedent, the State must do more than a drop a perfunctory footnote.[12]

[12] The State contends, Dkt. 35-1 at 26-27, that this case implicates the major questions doctrine, as articulated in *West Virginia v. EPA*, 597 U.S. 697 (2022). It does not. Even if clear congressional authorization were lacking, which it is not, the question whether Defendants have the authority under the IRA to acquire land in trust for the Tribe "does not involve an agency's

c. Congress did not need to directly reference the IRA in the Settlement Act for the IRA to apply to the Tribe.

The State's argument that Congress needs to affirmatively reference the IRA ignores the plain language of Section 9 and, if taken to its logical conclusion, renders Section 9 meaningless. Section 9 is clear that all laws that are generally applicable to tribes extend to the Tribe, unless the generally applicable law is inconsistent with a *specific* provision of the Settlement Act or otherwise prohibited by Section 9. Congress does not need to further specify whether a certain law applies or not. To determine whether a statute—like the IRA—applies to the Tribe, one need only consider whether the statute is generally applicable to tribes. If it is, the next inquiry is whether the operation of that generally applicable statute would be inconsistent with a *specific* provision of the Settlement Act. If it would not be inconsistent, then the generally applicable statue applies.[13]

Despite this clear language, the State argues Congress must specify the statutes that apply to the Tribe. But that negates the purpose of a catch-all provision like Section 9. Taken to its logical conclusion, the State's position would mean that by not identifying particular statutes in Section 9, Congress intended to not extend *any* statutes to the Tribe at all, notwithstanding the plain language to the contrary. It would also place an immeasurable burden on Congress and tribes to keep track of each statute, regulation, and law that is generally applicable to tribes and then petition Congress to affirmatively represent that the law applies to one or more of the five-hundred and seventy-four federally recognized. That result is untenable. As the State has pointed

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assertion of 'sweeping authority,'" *see Newland*, 2024 U.S. Dist. LEXIS 112920, at *21-22 (citation omitted), rendering the major questions doctrine inapplicable.

[13] Even if Section 9 were ambiguous as to Congress's intent to apply all laws of general application to Indians and Indian tribes to the Tribe, such ambiguity must be resolved in the Tribe's favor under the Indian canons of construction. *See*, *e.g.*, *Blumenthal*, 228 F.3d at 92-93.

out, in some instances, Congress may include a general catch-all provision while also specifically asserting that certain statutes apply. Dkt. 35-1 at 28-29. But that fact that Congress *may* do that does not *require* Congress to do that. Indeed, implicit in the Second Circuit's *Blumenthal* decision was the recognition that the IRA indeed extended to the Tribe to allow it to acquire lands in trust with non-Settlement Act funds.

The State's inapt comparison of the Settlement Act to the Coquille Restoration Act and the Auburn Indian Restoration Act is flawed, as those statutes arise out of fundamentally different contexts and served different purposes than the Settlement Act. In those cases, both tribes' federally recognized status had been formally terminated, which resulted in the loss of all benefits attendant to Indian tribes under federal law. *See* S. Rep. No. 101-50, 101st Cong., 1st Sess., 1 (1989) (discussing legislation restoring Coquille's federal recognition, including the provision requiring the "development of an economic development plan for the tribe" which the IRA would facilitate); S. Rep. No. 103-340, 103rd Cong., 2nd Sess.,7 (1994) (discussing how the Auburn Indian Community had rejected the IRA in 1935, and thus it was necessary to confirm that the IRA applied going forward so that the tribe could use its benefits to reorganize its tribal government). Thus, in restoring these tribes' federally recognized status, Congress set forth more detailed provisions to restore benefits that had been taken away. That is distinguishable from the Settlement Act, which extended federal recognition to the Tribe in the first instance. Accordingly, a better comparison to the Settlement Act at issue here is the Maine Indian Claims Settlement Act—which "both parties concede was a model for the Mashantucket Pequot's Settlement Act." *Blumenthal*, 228 F.3d at 90. The Maine Indian Claims Settlement Act has a provision similar to Section 9(a) of the Settlement Act. *See* Pub. L. 96-420, 94 Stat. 1785 (Oct. 10, 1980). Under § 6(h) of the Maine Indian Claims Settlement Act, Congress expressly stated that "the laws and

regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine," with some exceptions. In comparing these statutes, the Second Circuit forecloses the State's arguments that without an affirmative reference to the IRA, Congress could not have extended the IRA to the Tribe:

> We have compared both statutes and find in the Maine Settlement Act an obvious demonstration that Congress knew how to prohibit the Secretary from taking into trust any lands outside of specifically designated settlement lands. The *absence of an analogous provision* in the Settlement Act at issue in this case confirms that the Settlement Act *was not meant to eliminate the Secretary's power under the IRA* to take land purchased without settlement funds into trust for the benefit of the Tribe.

Id. at 90 (emphasis added). The Maine Indian Claims Settlement Act shows that Congress knew how to carefully delineate the applicability and inapplicability of particular laws to tribes, if it chose to do so. For example, in the Maine Indian Claims Settlement Act, Congress put a temporal limitation on applicability of laws. Under § 16, subsequently enacted laws of general applicability to tribes, do not necessarily apply in Maine "unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine." Congress further identified specific laws that may apply, *see* § 8, (affirmatively extending the Indian Child Welfare Act) and those that do not, *see* § 16. The State fails to explain why, when Congress chose to take a different approach in the Settlement Act and apply all laws of general application to the Tribe, Congress was required to specifically identify the IRA in Section 9(a).

d. The IRA is a law of general application to Indian tribes.

The Court should reject the State's argument that the IRA is not a law of general application. The State mischaracterizes the IRA by claiming that its only goal was to remedy prior federal policies and to do so only for a narrow subset of Indian tribes. Dkt. 35-1 at 28-29.

Congress enacted the IRA in 1934 as part of the federal government's return to supporting "principles of tribal self-determination and self-governance." *Cty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 255 (1992). This "sweeping" legislation, *Morton v. Mancari*, 417 U.S. 535, 542 (1974), upon which modern Federal Indian law is premised, manifested a sharp change in federal policy that replaced, and was further meant to reverse, the disastrous assimilationist policy of the nineteenth century. *Cty. of Yakima*, 502 U.S. at 255.

The "overriding purpose" of the IRA was far broader than remedying the negative effects of allotment, however, as Congress enacted the IRA to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Mancari*, 417 U.S. at 542; *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973); *see also Upstate Citizens for Equal., Inc. v. Jewell*, No. 5:08-CV-0633, 2015 U.S. Dist. LEXIS 38101, *2-3 (N.D.N.Y. Mar. 26, 2015) (describing the IRA as "the centerpiece of New Deal Indian policy," aimed to "enable tribes 'to interact with and adapt to modern society as a governmental unit'") (citing F. Cohen, *Handbook of Federal Indian Law*, 1.05 at 81 (Newton ed. 2012)), *aff'd sub nom Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556 (2d Cir. 2016), *cert denied*, 583 U.S. 1004 (2017); *County of Amador v. U.S. Dep't of Interior*, 872 F.3d 1012, 1022-23 (9th Cir. 2017), *cert denied*, 586 U.S. 815 (2018); *Confederated Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 556 (D.C. Cir. 2016) ("*Grand Ronde*"), *cert denied sub nom Citizens Against Rsrv. Shopping v. Zinke*, 581 U.S. 911 (2017).

To that end, the IRA's provisions seek to preserve and further tribal organization and communal land ownership. *See*, *e.g.*, 25 U.S.C. § 5101 (prohibiting further allotment of land); *id.* § 5108 (authorizing the Secretary to acquire land in trust); *id.* § 5110 (authorizing the Secretary

to proclaim new Indian reservations on lands acquired pursuant to the IRA); *id.* § 5123 (authorizing the Secretary to hold elections for tribes to adopt a constitution or similar governing documents). It thus follows that when Congress extended federal recognition to the Tribe through the Settlement Act—thereby establishing a government-to-government relationship with the Tribe—it sought to ensure that statutes like the IRA, which promote tribal self-governance, would apply to the Tribe.

The IRA was also intended to apply broadly to Indian tribes, whose histories and experiences with the Federal government vary widely. This is most evident in the IRA's provision requiring that elections be held in the years immediately following the statute's enactment to give Indian tribes the opportunity to *opt out* of the IRA. Under this provision, unless a majority of Indians voted to *reject* the IRA's application to their community, the statute would apply. 25 U.S.C. § 5125. Thus, Indian tribes who participated in such elections were necessarily eligible for the IRA's benefits unless they voted to reject the statute's application. *Stand Up for Cal. v. U.S. Dep't of Interior*, 204 F. Supp. 3d 212, 284-87 (D.D.C. 2016), *aff'd*, 879 F.3d 1177 (D.C. Cir. 2018); *cert denied*, 586 U.S. 1107 (2019). In 1983, the same year the Settlement Act was enacted, Congress restored Section 5 authority for those Indian tribes that voted to reject the IRA in the statute's early years. 25 U.S.C. § 2202.

For these reasons, the State's claim that the IRA is not a law of general application should be rejected as unsupported by the statute's text and the decades of case law recognizing the IRA's broad goals and application.

e. The IRA Section 5 authority is not inconsistent with the Settlement Act.

The State fails to demonstrate likelihood of success on the merits of its argument that extending the IRA would be inconsistent with a *specific* provision in the Settlement Act. But *Blumenthal* has already determined nothing in Section 5 of the Settlement Act would be

inconsistent with the Secretary's authority to acquire land into trust for the Tribe. *See Blumenthal*, 228 F.3d at 87. The Second Circuit relied on the plain language, structure of the Settlement Act, legislative history, Indian canons of construction, and other tools of statutory construction, to hold that "[n]othing in § [5](b)(7) supplants the Secretary's power under the IRA to take into trust lands acquire without the use of settlement funds. *Id.* at 87; *see also id.* at 86 ("the Secretary's decision to take the land into trust was a valid exercise of his authority under [§ 5] of the IRA."). Clearly, the IRA is not inconsistent with a specific provision of the Settlement Act.

The State's other argument that the IRA would be inconsistent with Section 2(f), a congressional finding, is nonsensical. Congressional findings are prefatory statements that may aid statutory interpretation of an operative clause. *E.g. District of Columbia v. Heller*, 554 U.S. 570, 578 (2008) ("[A]part from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause."); *Price v. Forrest*, 173 U.S. 410, 427 (1899) ("Although a preamble has been said to be a key to open the understanding of a statute, we must not be understood as adjudging that a statute, clear and unambiguous in its enacting parts, may be so controlled by its preamble as to justify a construction plainly inconsistent with the words used in the body of the statute.").

Even were Section 2(f) considered operative, extending the IRA to the Tribe is not inconsistent with Section 2(f). Section 2(f) is a congressional finding explaining that because Connecticut provided some land, construction work, and other assistance to the Tribe, the State was not required to contribute directly to the claims settlement. A single sentence within Section 2(f) says that the United States "denied that it had jurisdiction over or responsibility for said

Tribe." The State grasps onto that language to argue the Tribe was not "under federal jurisdiction" and, consequently, is ineligible for the IRA. This argument fails for two reasons.

First, even if Congress sought to limit the number of Indian tribes who might be eligible for the IRA's benefits as a general matter, Congress may nevertheless extend the IRA to particular tribes through specific legislation, as is the case here. *See Carcieri v. Salazar*, 555 U.S. 379, 392 n.6 (2009) (noting instances of where "Congress chose to expand the Secretary's authority to particular Indian tribes not necessarily encompassed within the definitions of 'Indian' set forth in § [5129])."[14] Thus, even if the State is correct that the Tribe falls outside the IRA's scope, and it is not, Congress fixed that issue by extending the IRA to the Tribe through the Settlement Act.

Second, the State repeatedly mischaracterizes the *Carcieri* decision as holding that the IRA only applies to tribes that were "federally recognized and under federal jurisdiction as of 1934" and asserts that the Tribe was neither. Dkt. 35-1 at 32. While the Tribe's 1934 status is irrelevant as discussed above, the Court should also reject the State's misreading of the case. In *Carcieri*, the Supreme Court only interpreted the meaning of the word "now" in the IRA's first definition of "Indian," which encompasses "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." 25 U.S.C. § 5129; *Carcieri*, 555 U.S. at 395. The Court held that "now" meant 1934, such that to qualify under the first definition of Indian, a tribe must have been "under Federal jurisdiction" in 1934. *Id.* The Court did not

[14] Defendants do not concede that the Tribe does not fit within one or more definitions of "Indian" in the IRA, including the first definition, which encompasses "all persons of Indian descent who are members of any Indian tribe now under federal jurisdiction." 25 U.S.C. § 5129. Defendants' position is that the Settlement Act obviates the need for Interior to determine whether the Tribe was "under federal jurisdiction" in 1934. Such inquiry is only required, consistent with *Carcieri*, when an Indian tribe lacks specific legislation confirming their eligibility for the IRA's benefits.

interpret or otherwise define the term "under Federal jurisdiction." Nor did the Court conclude that a tribe must be "federally recognized" in 1934 to fall within the first definition. Instead, post-*Carcieri*, lower courts have consistently rejected arguments that "federal recognition" in 1934 is required by *Carcieri*. *See*, *e.g.*, *County of Amador*, 872 F.3d at 1020-24 (finding a "better reading of the statute" is that recognition has no temporal requirement); *Grand Ronde*, 830 F.3d at 559-63 (finding ambiguity and upholding Interior's interpretation of the definition as not requiring "federal recognition" in 1934).

With respect to "under Federal jurisdiction," Interior's interpretation of the phrase has been upheld by every court to consider it. *See*, *e.g.*, *County of Amador*, 872 F.3d at 1024-27 (Interior's interpretation is the "best interpretation" of the statute); *Grand Ronde*, 830 F.3d at 563-65 (Interior's interpretation reasonable "in light of the remedial purposes of the IRA and applicable canons of statutory construction"); *Littlefield v. U.S. Dep't of Interior*, 656 F. Supp. 3d 280, 293-34 (D. Mass. 2023), *aff'd*, 85 F 4th 635 (1st Cir. 2023); *cert denied*, 144 S. Ct. 1117 (2024).

Whether an Indian tribe was "under Federal jurisdiction" in 1934 is a fact-intensive, tribe-specific inquiry that considers the entire historical record for that tribe. Isolated statements by agency officials questioning a tribe's status in 1934 are not dispositive. *See*, *e.g.*, *Grand Ronde*, 830 F.3d at 565-66 (historical record reviewed "in its entirety," including favorable and unfavorable evidence, established that the Cowlitz Indian Tribe was "under Federal jurisdiction" in 1934). The State's unsubstantiated assertion that the Tribe was not "under Federal jurisdiction" is both irrelevant and insufficient for establishing a likelihood of success on the merits.[15]

[15] The State's unsubstantiated arguments about the various Solicitor M-Opinions are similarly irrelevant and insufficient to establish a likelihood of success. *See* Dtk. 35-1 at 23-24 & n. 17.

C. The Balance of the Equities and the Public Interest Do Not Warrant a Stay.

Regardless of which iteration of the preliminary injunction test this Court applies, it should consider the balance of the equities or hardships. Under the pre-*Winter* test upheld in *Citigroup*, it appears that a court would only consider the balance of the hardships under the lesser "serious questions" merits prong. But nothing precludes this Court from considering whether "the balance of the equities tips in [the State's] favor." Given the potential for harm to the United States and the Tribe if Interior is enjoined from acquiring the land in trust pursuant to its regulations, consideration of the balance of the equities or hardships is an important factor in considering whether the State is eligible for the "extraordinary relief" it seeks.

Where, as here, the federal government is a party, the final two *Winter* factors—the balance of the equities and the public interest—merge. *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58-59 (2d Cir. 2020) (citing *Nken*, 556 U.S. at 435). To obtain the extraordinary remedy it seeks, the State must demonstrate that the balance of the equities tips in the State's favor. To balance the equities, a court must "consider the effect on each party of granting or withholding of the requested relief." *Succow v. Bondi*, 3:25-CV-250, 2025 U.S. Dist. LEXIS 46770 (D. Conn. Mar. 14, 2025). This case implicates the interests of three sovereigns: the Tribe, the United States, and the State. The State's alleged harms are minimal and far from irreparable. That is not the case for the United States or the Tribe. This Court should therefore find that the balance of the equities tips not in favor of the State, but of the United States and Tribe.

Even if Defendants had relied on certain M-Opinions in reaching its decisions in 2024, the 2025 "suspension review" has no bearing on the likelihood of success of the State's claim. It is a axiomatic that review of agency decisions considers the information at the time of the decision. Any policy changes after the fact are irrelevant.

The United States is under an ongoing, mandatory duty to acquire the parcels at issue in this case in trust for the Tribe "immediately." *See* 25 C.F.R. § 151.12(d)(2)(iv). This duty raises the bar for the State to obtain preliminary injunctive relief, as demonstrated by the fact that the higher "likelihood of success" standard applies in the Second Circuit when a party seeks to enjoin government action taken pursuant to a duly enacted statute or regulation. *See supra*, Section I. As the Second Circuit has explained, "governmental policies implemented through legislation"—like the IRA and its implementing regulations—"are entitled to a higher degree of deference and should not be enjoined lightly." *Trump*, 943 F.3d at 638 (quoting *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995)). The State has not demonstrated that its ability to enforce its laws or to otherwise act in its sovereign capacity will be affected in a concrete, specific way if the parcels are acquired in trust. But if the stay is granted, the United States will be unable to act in accordance with specific governing laws that reflect the considered deliberation of the political branches of the federal government. That inability constitutes a concrete harm to the United States that outweighs any comparable harm to the State.

III. CONCLUSION

The State fails to justify the extraordinary and drastic remedy of a Section 705 stay. For the reasons set forth herein, Defendants respectfully request that the Court deny the State's Motion.

DATED: June 27, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2025, a copy of the foregoing DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR EMERGENCY STAY UNDER 5 U.S.C. § 705 was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

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