UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT, Plaintiff, -against- UNITED STATES DEPARTMENT OF THE INTERIOR, DOUG BURGUM, BRYAN MERCIER, BUREAU OF INDIAN AFFAIRS, KIMBERLY BOUCHARD, *Defendants*.	**OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION AND SETTING EXPEDITED CASE MANAGEMENT SCHEDULE** 3:25-CV-580 (VDO)

VERNON D. OLIVER, United States District Judge:

This action concerns two undeveloped parcels of land in Ledyard, Connecticut. In bringing this suit, however, the State of Connecticut advances an argument that would apply much more broadly: Connecticut argues that the federal government may not take land into trust for the benefit of the Mashantucket Pequot Tribal Nation. At stake, then, are important sovereignty interests of the United States, the Mashantucket Pequot, and the State of Connecticut.

These important and complex legal issues have been litigated before administrative agencies for several years and, more recently, before this Court. After the Department of the Interior confirmed that the United States could take land into trust for the Mashantucket Pequot, Connecticut filed this suit seeking judicial review of that determination. In the past few weeks, the course of these proceedings has shifted dramatically. The United States now explains that it may transfer deeds to the land from Connecticut into trust for the Mashantucket

Pequot at any point after midnight on July 10, 2025.[1] Connecticut believes that it would be irreparably harmed by this transfer and, therefore, has sought emergency relief from this Court.

Connecticut asks the Court to issue a stay or preliminary injunction to preserve the status quo while this litigation proceeds. Defendants[2] in this matter—the Federal government and Federal officials afforded the power to determine whether to take lands into trust status and to execute those acquisitions—have made clear that they will not accede to any request to postpone taking these lands into trust for the Mashantucket Pequot absent a court order prohibiting them from doing so.

The Court now issues just such an order. After extraordinarily expedited briefing and an even shorter period for deliberation, the Court concludes that Connecticut has—if only by a narrow margin—established the factors necessary to warrant a temporary injunction preserving the status quo. For the reasons explained below, the Court grants Connecticut's emergency motion and issues a narrowed preliminary injunction: Defendants are temporarily enjoined from taking deed to the land at issue and placing that land into trust for the Mashantucket Pequot.

But Defendants are enjoined only from taking this final step in the process. As Defendants themselves explained, they must complete a number of logistical steps before the

[1] Due to the expedited nature of this litigation, shortly before midnight on July 9, 2025, this Court issued a short docket order granting Connecticut's emergency motion and explaining that this opinion with the Court's reasoning would follow. ECF No. 47.

[2] Connecticut has named the following parties as defendants: the United States Department of the Interior ("DOI"), Doug Burgum in his official capacity as the Secretary of the Interior, Bryan Mercier in his official capacity as Assistant Secretary for Indian Affairs of the DOI, the Bureau of Indian Affairs ("BIA") as an office within the DOI, and Kimberly Bouchard in her official capacity as Regional Director for the Eastern Regional Office of the BIA.

land can be taken into trust. Those actions may proceed while this litigation runs its course: Defendants are prohibited only from finally executing the acquisition of this land.[3] And, as described below, the Court issues a scheduling order setting an expedited schedule for the resolution of this litigation.

I. BACKGROUND

A. The Mashantucket Pequot Tribal Nation's administrative proceedings regarding the two Ledyard parcels

In August 2023, the Mashantucket Pequot Tribal Nation (the "Tribe") filed three applications with the Regional Director of the Eastern Regional Office of the BIA.[4] All three applications ask the Regional Director to take the land, then held in fee simple by the Tribe, into trust status for the Tribe.[5]

Only two of those applications are at issue in this litigation. The first application concerns a parcel of land of about seventy-seven acres described as 119 Indiantown Road, Ledyard, Connecticut.[6] The Tribe acquired the parcel in 2007.[7] It is comprised of wetlands and forests and has no permanent structures.[8] At present, 119 Indiantown Road is used only for

[3] Should the parties require clarification as to whether any particular step in the acquisition process violates the terms of this preliminary injunction, the parties should file a motion seeking clarification before taking the step in question.

[4] App'x, ECF No. 1-1 at A-2. The Appendix in this action will be cited with reference to the "A"-stamped number on the page.

[5] *Id.*

[6] *Id.* at 3.

[7] *Id.*

[8] *Id.* at 4, 6; Compl., ECF No. 1, ¶ 76.

riding All-Terrain Vehicles and for hiking, and the Tribe disclaims any "current plans to develop" the property.[9]

The second parcel of land at issue is described as 159 Indiantown Road.[10] The Tribe acquired this property in 1994.[11] According to the Tribe, this property is about five acres of undeveloped land.[12] The Tribe stated that it has no plans to change the use of this parcel of land.[13]

B. The Indian Reorganization Act and the trust power

In these applications, the Tribe contends that federal law affords the Secretary of the Interior (the "Secretary") the authority to acquire land for the purpose of holding that land in trust status for the Tribe.[14] Some background on the Indian Reorganization Act (the "IRA") and the trust status more broadly makes clear the upshot of this argument. "Enacted in 1934, the IRA fundamentally restructured the relationship between Indian tribes and the federal government, reversing the Nineteenth Century goal of assimilation and embodying 'principles of tribal self-determination and self-governance.'" *Connecticut ex rel. Blumenthal v. U.S. Dep't of Interior*, 228 F.3d 82, 85 (2d Cir. 2000) ("*Blumenthal*") (quoting *Cnty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 255 (1992)).[15]

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[9] App'x at 6–7.

[10] *Id.* at 13.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 16.

[14] *Id.* at 4, 14.

[15] Unless otherwise noted, this opinion omits internal quotations, citations, and footnotes from cited authorities, and adopts alterations contained therein.

"The IRA was the cornerstone of the Indian New Deal." *Carcieri v. Salazar*, 555 U.S. 379, 404 n.4 (2009) (Stevens, J., dissenting). "The intent and purpose of the [IRA] was to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 152 (1973). "The [IRA] . . . authorizes the Secretary of the Interior . . . to acquire land and hold it in trust 'for the purpose of providing land for Indians.'" *Carcieri*, 555 U.S. at 381–82 (quoting 48 Stat. 985 at § 5 (codified at 25 U.S.C. § 5108)).

"When the Secretary takes land into trust on behalf of a tribe pursuant to the IRA, several important consequences follow. Land held in trust is generally not subject to (1) state or local taxation, (2) local zoning and regulatory requirements, or (3) state criminal and civil jurisdiction[.]" *Blumenthal*, 228 F.3d at 85–86; *see also Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142, 1149 (9th Cir. 2020) ("[L]and held in trust under [the] IRA is effectively removed from state jurisdiction, for when Congress enacted [the] IRA it doubtless intended and understood that the Indians for whom the land was acquired would be able to use the land free from state or local regulation or interference[.]"). "A tribe may own real property without putting it into trust. However, doing so better preserves the tribe's land base because interests in land held in trust may not be sold or otherwise alienated without an Act of Congress." Mary Jane Sheppard, *Taking Indian Land into Trust*, 44 S.D. L. REV. 681, 682 (1999).

If the two parcels of land in Ledyard at issue in this action are taken into trust status, Connecticut loses jurisdiction over that land. The two applications, therefore, implicate Connecticut's sovereignty, or its ability to "exercise governmental power over land." *Kansas v. United States*, 249 F.3d 1213, 1229 (10th Cir. 2001).

The process by which the Federal government may take land into trust is set out in federal regulations. *See* 25 C.F.R. § 151.10. Among many considerations, those regulations require the Secretary to "consider" "[t]he existence of statutory authority for the acquisition and any limitations contained in such authority" "when evaluating requests for the acquisition of land in trust status when the land is located contiguous to an Indian reservation[.]" *Id.* at § 151.10(a)(1). And federal regulations further require that affected state and local governments receive notice and an opportunity to comment on the acquisitions: "Upon receipt of a written request to have land contiguous to an Indian reservation acquired in trust status, the Secretary shall notify the State and local governments with regulatory jurisdiction over the land to be acquired." *Id.* at § 151.10(d). "The notice will inform the State or local government that each will be given 30 calendar days in which to provide written comments[.]" *Id.*

But the federal government may not take land into trust for every tribe in the territory of the United States. Instead, the Supreme Court clarified in 2009 that the IRA "limits the Secretary's authority to taking land into trust for the purpose of providing land to members of a tribe that was under federal jurisdiction when the IRA was enacted in June 1934." *Carcieri*, 555 U.S. at 382. Prior to *Carcieri*, the dominant position—which the DOI argued that the Court should adopt in that case—had been that the IRA "authorize[d] the Secretary to take land into trust for members of tribes that are under Federal jurisdiction at the time that the land is accepted into trust." *Id.*; *see also* Carcieri *Crisis: The Ripple Effect on Jobs, Economic Development and Public Safety in Indian Country, Hearing Before the S. Comm. on Indian Affs.*, 112th Cong. (2011) (statement of Larry Echo Hawk, Assistant Sec. for Indian Affs., U.S. Dep't of the Interior), *available at* https://www.doi.gov/ocl/hearings/112/CarcieriCrisis_101311 ("The *Carcieri* decision was

inconsistent with the longstanding policy and practice of the United States under the [IRA] . . . to treat tribes alike regardless of their date of federal acknowledgment.").

C. The Settlement Act and *Connecticut ex. rel Blumenthal*

At the heart of this litigation is whether the Mashantucket Pequot are one of the tribes to which the IRA's land-into-trust power applies. All parties to this litigation, including the Tribe, agree that the Mashantucket Pequot were not "under federal jurisdiction" in 1934.[16] That settles the *Carcieri* inquiry, but it does not settle the question presented in this action because the Tribe and the Defendants contend that later-enacted legislation applying only to the Mashantucket Pequot extends the IRA's power to take land into trust to cover the Tribe.

That law, the Mashantucket Pequot Indian Claims Settlement Act (the "Settlement Act"), was enacted in 1983. Pub. L. No. 98-134, 97 Stat. 851 (1983) (formerly codified at 25 U.S.C. § 1751 *et seq*.). "The Settlement Act was the consequence of a 1976 lawsuit filed by the Tribe, long before it had any notion that it would become a casino owner, asserting title to several hundred acres of land in and around Ledyard, Connecticut." *Blumenthal*, 228 F.3d at 86. "In that action, the Tribe claimed that in 1855 Connecticut had transferred nearly 800 acres of Tribe-owned land out of tribal hands . . . in violation of the [provisions] of the Trade and Intercourse Act of 1790." *Id.* "The immediate effect of the 1976 lawsuit was to place a cloud on the title to hundreds of acres of privately and publicly owned land in Connecticut and to threaten to bring about many years of protracted litigation." *Id.*

The Settlement Act was the fix for this land-claim dispute. "The Settlement Act extinguished the Tribe's claims to hundreds of acres of land. In exchange, the Settlement Act:

[16] Oral Arg. Tr., ECF No. 46 at 15–16, 19.

(1) provided for federal recognition of the Tribe, (2) established a $900,000 fund (the "settlement fund"), designed principally for the purchase of private property, and (3) identified boundaries within which lands acquired by the Tribe would be held in trust by the Secretary and would constitute the Tribe's reservation, the so-called settlement lands." *Id.*

More than twenty-five years ago, when this issue was first litigated before the federal courts, Connecticut argued only that "the Settlement Act . . . prevent[ed] the Secretary from taking into trust" lands other than those included in a map, referenced in the Settlement Act, that "depict[s] the Tribe's pre-settlement reservation[] and the publicly and privately owned land surrounding the reservation that comprises the settlement lands." *Id.* at 86–87 (describing and defining the "settlement lands"). Connecticut's argument relied on one subsection of the Settlement Act:

> Land or natural resources acquired under this subsection which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such land and natural resources. Such land and natural resources shall not be subject to any restriction against alienation under the laws of the United States.

Pub. L. No. 98-134 at § 5(b)(8). In the *Blumenthal* litigation, Connecticut argued that this Section "prohibits the Secretary from taking non-settlement lands purchased with non-settlement funds into trust for the benefit of the Tribe." *Blumenthal*, 228 F.3d at 87. The district court ruled in the State's favor and "held that the phrase, 'acquired under this subsection,' within § (b)(8), was ambiguous and, turning to the Act's legislative history, found that Congress intended the statute broadly to resolve the geographical limits of the Tribe's sovereignty." *Id.* (citing *Connecticut v. Babbitt*, 26 F. Supp. 2d 397, 403–06 (D. Conn. 1998)).

The Second Circuit reversed the district court, holding that "the structure and language of the Settlement Act demonstrates that Section (b)(8) applies only to land purchased with settlement funds." *Id.* at 88. The Second Circuit further held that "[t]he statute is silent with regard to lands, like the contested 165 acres here, not purchased with settlement funds." *Id.* Therefore, proceeding under the assumption that the IRA applied to the Tribe, the Second Circuit ruled in favor of the Federal defendants and allowed the acquisition action to proceed. *Id.* at 90 ("[T]he 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." (emphasis added)).

The argument that Connecticut made in *Blumenthal*, and the analysis that the Second Circuit therefore employed, reflect the pre-*Carcieri* consensus that the IRA's land-into-trust power covered any tribe "under federal jurisdiction" at the time of the land's proposed acquisition by the federal government. All parties to that litigation—and, as a result, the courts—proceeded under the assumption that the IRA therefore covered the Mashantucket Pequot after the Settlement Act unless that Act had prohibited the application of the IRA to the Tribe. But *Carcieri* reversed that understanding. *See* 555 U.S. at 382. Instead, for the IRA to apply of its own force, courts must determine whether the tribe in question in any given case was "under federal jurisdiction" in 1934; a tribe's status at the time of a proposed land acquisition—the source of the *Blumenthal* assumption that the IRA covered the Mashantucket Pequot—was rendered meaningless.

Because of *Carcieri*, the Settlement Act is now asked to perform the opposite of its role in the *Blumenthal* litigation. In *Blumenthal*, Connecticut argued that the Settlement Act

precluded the IRA's application to the Tribe; in this action, the Tribe argues that the Settlement Act affirmatively extended the IRA's land-into-trust power to the Tribe.

D. The agency proceedings in this action

With that background, we return to the two Indiantown Road parcels at issue in this litigation. About a year after the Tribe applied to the Regional Director to have these two parcels taken into trust in August of 2023, the Regional Director granted both applications through separate (though substantively identical) decisions.[17] Curiously, in both decisions, the Regional Director cited the IRA as statutory authority for the proposition that the Secretary could acquire the properties in question.[18] In its applications, however, the Tribe did not argue that the IRA could supply this authority of its own force. Instead, the Tribe cited the Settlement Act for that authority.[19]

Around the same time, the Regional Director issued a substantively identical decision granting the Tribe's aforementioned application for a third parcel of land with an Indiantown Road address.[20] That decision identifies Sections 9(a) and 9(c) of the Settlement Act as the

[17] App'x at 107–124. Before the Regional Director, Connecticut's comments in opposition to the Tribe's applications regarding these two parcels were not considered: The Regional Director held that the State's comments were untimely, while the State contended that it had not been properly served with notice of these two applications. *Id.* at 61. The parties dispute vociferously whether Defendants sufficiently served Connecticut's governor by mailing notice to a mailroom at the state capitol, and much of the briefing in this litigation has been devoted to that procedural issue.

At this stage, the Court concludes that it can resolve the pending emergency motion without addressing Connecticut's procedural arguments. Nothing in this opinion should be construed to express any view as to the merits of these arguments.

[18] *Id.* at 108, 118.

[19] *Id.* at 4, 14.

[20] *Id.* at 267.

source of the statutory authority to take land into trust for the Tribe.[21] In that action, which the parties report remains pending before the Interior Board of Indian Appeals ("IBIA"),[22] the State *was* permitted to comment.[23] The Regional Director there noted and overruled the State's opposition filings and held that the Settlement Act extends the IRA to the Tribe.[24]

Meanwhile, with respect to the two parcels at issue in this dispute, the State timely appealed both decisions to the IBIA, which consolidated the appeals.[25] The Assistant Secretary—Indian Affairs ("ASIA") then assumed jurisdiction over the appeals and, following briefing, affirmed the decision of the Regional Director.[26] That affirmance rendered agency proceedings regarding these two parcels of land final, which has the effect of placing

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[21] *Id.* at 268 ("Congress made the IRA applicable to the Tribe through the Mashantucket Pequot Indian Claims Settlement Act. Subsections 9(a) and 9(c) of the Settlement Act provide specific authority for the Secretary to take lands into trust for the Tribe by making the IRA applicable to the Tribe.").

[22] *Compare* Pl.'s Mem. in Supp. of Renewed Emer. Mot., ECF No. 35-1 at 6 and Def.'s Opp., ECF No. 39 at 21.

[23] App'x at 65.

[24] *Id.* at 268, 272–73. Separate from its argument about the substance of the Settlement Act, Connecticut argues for remand on the ground that that the Regional Director committed an obvious error in citing only the IRA as the statutory basis for the authority to take land into trust for the Tribe with respect to the two parcels at issue in this action. Defendants argue that remand would be pointless and thus is neither required nor warranted. *See Xiao Ji Chen v. U.S. Dep't of Just.*, 471 F.3d 315, 338 (2d Cir. 2006) ("[A]n error does not require a remand if the remand would be pointless because it is clear that the agency would adhere to its prior decision in the absence of error."). Defendants cite the Regional Director's explicit adoption in this third decision of the Tribe's argument that the Settlement Act extends the IRA's land-into-trust power to the Tribe as evidence that the agency would adhere to its previous decision on remand, while the State argues that the agency might change its mind because an election has initiated a change in some of the personnel within the agency. Def.'s Opp. at 21–22; Pl.'s Reply, ECF No. 41 at 10.

The Court concludes that it can resolve the pending motion without reaching this argument, and therefore declines to address the argument at this stage.

[25] *Id.* at 158–69.

[26] *Id.*

Defendants under the obligation to "[i]mmediately acquire the land in trust status . . . upon the fulfillment of any other Department of the Interior requirements." 25 C.F.R. § 151.13(c)(2)(iii). Shortly after the ASIA's affirmance was published, Connecticut sought an administrative stay on these actions from the agency, which the ASIA has not yet resolved.[27]

E. The procedural history of this suit

After a prolonged period in which the ASIA failed to rule on Connecticut's motion for an administrative stay, the State filed this action on April 11, 2025.[28] The Complaint, brought under the Administrative Procedure Act, 5 U.S.C. §§ 701-06, principally seeks a declaratory judgment "to preserve the Court's ability to consider the State's emergency motion in full and to prevent the possibility of irreparable harm in the interim," and an injunction to implement that judgment.[29]

Three days later, the State filed an emergency motion for a stay.[30] That motion, which is substantively identical to the renewed emergency motion that remains pending before the Court,[31] argued that the State would be irreparably harmed if the Federal government took the land into trust.[32] On April 15, 2025—the next day—this Court issued an order temporarily restraining the Defendants from implementing the agency actions "to preserve the Court's ability to consider the State's emergency motion in full and to prevent the possibility of

[27] Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 7.

[28] ECF No. 1 at 1.

[29] *Id.* at 34–35. The State notes, but has not pressed, a variety of other theories for relief, such as that "[Section] 5 of the IRA is an unconstitutional delegation of authority[.]" *Id.* at 34.

[30] Emer. Mot. for Stay, ECF No. 4.

[31] ECF No. 35.

[32] Mem. in Supp. of Emer. Mot. For. Stay, ECF No. 4-2.

irreparable harm in the interim."[33] The Court further scheduled a status conference and hearing on the emergency motion to take place within ten days, and set the temporary stay to expire on April 29, 2025.[34]

Defendants, at that time, were not eager to resolve this case on an emergency posture. Mere hours ahead of the status conference, the parties sought to postpone the forthcoming status conference through a joint motion by the Defendants and the State that represented that the Defendants required more time to determine its position.[35] That motion further requested to vacate the hearing scheduled for April 25 and to extend the Court-issued stay then-scheduled to conclude on April 29 until May 13.[36] The Tribe—whose attorneys had, by then, entered appearances on behalf of the Tribe as an interested party[37]—stated through a separate notice that it did not object to the proposed extension of the stay "for purposes of discussing legal options with the Tribe's leadership and preparing thorough but succinct briefing on the numerous issues raised by the State's [arguments.]"[38]

The Court nonetheless moved forward with the remote status conference.[39] Following that conference, the Court granted the joint motion to extend the stay.[40] The Court noted that "[a]t that conference, the United States and the Tribe represented that each required additional

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[33] ECF No. 9 at 3.

[34] *Id.* at 3–4.

[35] ECF No. 22 at 1.

[36] *Id.*

[37] *See* ECF Nos. 13–15, 19–20.

[38] ECF No. 23 at 1.

[39] ECF No. 27.

[40] ECF No. 25.

time to discuss the issues in this action with their clients."[41] The Court also set an unusually swift briefing schedule, even for an expedited case, with briefs from the Tribe and the Defendants due on May 2, 2025, and a reply brief from the state due on May 6, 2025, and required a joint status report in advance of those deadlines.[42]

In the joint status report complying with that order, the parties represented that they "ha[d] conferred and reached agreement on next steps in this case."[43] Specifically, the status report represented, "Defendants have agreed not to take any actions or steps to (1) implement the administrative decisions at issue in this case or (2) acquire title to the parcels at issue . . . in trust for the Tribe until 30 days after Defendants file the Answer or otherwise respond to the Complaint in this case."[44] In a separate notice, the Tribe neither objected nor consented to Defendants' voluntary stay, instead "maintain[ing] that federal law requires [the ASIA] to accept the two parcels at issue in this litigation into trust 'immediately,' and that this requirement is enforceable through the Administrative Procedure Act[.]"[45] The Tribe represented that it "continue[d] to assess its options for seeking redress."[46]

The Court subsequently entered an order terminating the temporary stay (as the Parties had mutually agreed that the Defendants would voluntarily stay their efforts to take title to the two parcels of land) as well as the briefing and hearing schedule then in effect.[47] The Court

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[41] *Id.*

[42] *Id.*

[43] ECF No. 28 at 1.

[44] *Id.*

[45] ECF No. 29 at 1.

[46] *Id.* at 2.

[47] ECF No. 31.

noted that it "encourages the Parties [to] act expeditiously to move this action—which presents important issues and impacts the interests of a third party—towards resolution."[48]

Defendants filed their answer on June 10, 2025.[49] Two weeks later, on June 24, 2025, the State renewed its emergency motion for a stay.[50] The State noted that because Defendants filed their answer on June 10, 2025, the voluntary stay would expire on July 10, 2025, or thirty days after the answer was filed.[51] In this renewed motions, Connecticut reported that "[t]he State and Defendants conferred to discuss the issue" and "Defendants have now made clear to the State that they will not agree to any voluntary stay past July 10, 2025."[52] Further, Connecticut represented, Defendants stated "that they will immediately begin taking steps toward acquiring the land after that date unless this Court orders otherwise."[53]

That same day, the Court entered a docket order requiring that any brief in opposition be filed by June 27, and alerting the parties that it would schedule argument on the motion.[54] The Court later scheduled argument for July 7.[55] On June 27, both the Defendants and the Tribe filed oppositions to the State's motion.[56] Those oppositions total more than seventy pages. The State filed a reply brief in the late-night hours of July 4, 2025.[57] The Court held

[48] *Id.*

[49] ECF No. 34.

[50] ECF No. 35.

[51] *Id.* at 1.

[52] *Id.*

[53] *Id.*

[54] ECF No. 36.

[55] ECF No. 37.

[56] ECF Nos. 38, 39.

[57] ECF No. 41.

argument in a remote setting on July 7.[58] At oral argument, the Court inquired as to whether Defendants would agree to a stay of any length—even a week—to allow the Court to carefully examine the complex issues raised in this action. In response, Defendants represented that they would not agree to a stay of any length, though they made clear that they would honor any court-ordered stay.[59]

Litigation is not meant to be conducted at breakneck speed.[60] Of course, sometimes circumstances necessitate that litigation take place on an expedited timeline. *See generally Trump v. CASA, Inc.*, 606 U.S. ----, 2025 WL 1773631, at *19 (June 27, 2025) (Kavanaugh, J., concurring) (discussing the frequency with which federal courts are called upon to resolve disputes on an expedited basis). But such cases are the norm, not the exception. Complex legal issues like those presented in this case benefit from careful research and reflection, not from hasty resolution.

The Court is not convinced that this action needed to be resolved on such an emergency basis. At oral argument, Defendants, fulfilling their duty of candor to the Court, represented that they could not immediately take the deeds to the two parcels in dispute on July 10, 2025. Oral Arg. Tr. at 10 ("[T]he land will not be taken into trust on July 10th. There are still administerial actions that will need to be taken, but because there's a stay in place, we're not able to coordinate on those administerial actions. . . . [A]t the very least, a site inspection needs to be done.").

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[58] Oral .Arg. Tr.

[59] *Id.* at 10–11.

[60] In this action, for example, the Tribe's opposition brief cites repeatedly to the administrative record. *See generally* Tribe's Opp., ECF No. 38. The administrative record, however, has not been filed in this action and is not available on this Court's docket for review.

This justification—that preparatory tasks, which take time, cannot proceed during a stay—is the only proffered explanation for Defendants' need for resolution of the State's request for a stay by July 10. But, as this very order demonstrates, that Defendants need to be able to take preparatory actions does not necessitate full resolution of this matter before July 10: This order explicitly allows the Defendants to take those preparatory actions and prohibits only the acquisition of the deeds and the finalization of the transfer of land—the steps that the State claims will cause it irreparable harm. Put otherwise, Defendants have (1) represented to the Court that they cannot practicably finalize the acquisition of the two parcels at issue here on July 10 (or shortly thereafter) and (2) nonetheless refused to agree that they will *not* acquire these two deeds on July 10 (or a period of any length thereafter).

Further, the Court notes that Defendants and the Tribe have benefited substantially from agreeing to an initial extension of the temporary stay, and then imposing a voluntary stay, before notifying the Plaintiffs that they would, within mere weeks, begin working to take title to the two parcels of land at issue in this litigation. While Defendants and the Tribe had the entirety of the period between April 14, 2025, and June 27, 2025—seventy-four days—to review the State's arguments, the State had only a week to respond to both the Defendants and the Tribe.

To be clear, Defendants are under no obligation to agree to any sort of prolonged stay. They are entirely within their rights to oppose the State's motion on the basis of the arguments they raise in opposition. But the effect of the schedule that Defendants have insisted upon is to afford the Court only five days (including a holiday weekend) after the completion of briefing to issue a ruling and supporting reasoning. Simply put, artificially shortened deliberative processes are not conducive to the process of reasoned decision-making. And, because

Defendants' only purported justification for insisting on this timeline—the preparatory steps—does not logically support opposition to a stay of any length, the Court concludes that Defendants have failed to provide a reasonable explanation for their position on the pending motion.

Nonetheless, in the absence of an unequivocal representation by Defendants that the land in question will not be taken into trust on July 10 or shortly thereafter, the Court issues this opinion on the timeline insisted upon by the Defendants to ensure that the State does not suffer irreparable harm as a result of the Court's inaction.

II. DISCUSSION

A. Legal Standard

The State moves for a stay pursuant to 5 U.S.C. § 705. That Section, entitled "Relief pending review," reads:

> When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

5 U.S.C. § 705. The State contends, at length, that it need only show irreparable harm—and not all of the well-known factors required for a preliminary injunction—to receive a Section 705 stay.

The State offers a number of arguments to this effect. First, it notes that the portion of Section 705 referring to "reviewing courts" would be a nullity if it only afforded courts the power to issue preliminary injunctions, a power that they already possess. *See Winter v. Nat.*

Res. Def. Council, Inc., 555 U.S. 7, 21 (2008); *see also* Fed. R. Civ. P. 65. Second, it contends that the emphasis on "irreparable harm" in the text of the statute indicates a particular emphasis on that factor absent from the *Winter* standard for a Rule 65(a) preliminary injunction. Third, it marshals a variety of legislative history to argue that a Section 705 stay requires a lesser showing than an injunction, including congressional rejection of alternative proposals requiring merits showings to support the award of a Section 705 stay.[61] Defendants and the Tribe disagree. They argue that a movant seeking a stay under Section 705 must meet the same standard as is required to attain a preliminary injunction.

The State's argument is forceful and is not without merit. But it runs headlong into an avalanche of persuasive authority from around the nation holding that "[t]he standard for a stay under 5 U.S.C. § 705 is the same as the standard for a preliminary injunction." *New York v. U.S. Dep't of Educ.*, 477 F. Supp. 3d 279, 294 (S.D.N.Y. 2020) (citing *Bauer v. DeVos*, 325 F. Supp. 3d 74, 104–05 (D.D.C. 2018); *D'Ambrosio v. Scott*, 2025 WL 1504312 (D. Vt. May 9, 2025); *Wyoming v. U.S. Dep't of the Interior*, 2018 WL 2727031, at *2 (10th Cir. June 4, 2018) (Matheson, J., concurring in part and dissenting in part); *Affinity Healthcare Servs., Inc. v. Sebelius*, 720 F. Supp. 2d 12, 15 n.4 (D.D.C. 2010); *Scarpa v. Smith*, 294 F. Supp. 13, 14 (S.D.N.Y. 1968); *Cuomo v. U.S. Nuclear Regul. Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985) (per curiam); *All. for Hippocratic Med. v. FDA*, 78 F.4th 210 (5th Cir. 2023) (overruled on other grounds, 602 U.S. 367 (2024)); *Ohio ex rel. Celebrezze v. U.S. Nuclear Regul. Comm'n*,

[61] Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 9 "quoting Administrative Procedure: Hearings before the House Committee on the Judiciary, 79 Cong. at 146 (Jun. 21, 25, 26, 1945) ("[E]very reviewing court . . . shall postpone the effective date of any administrative action, rule, or order to the extent necessary to accord the parties a fair opportunity for judicial review of any substantial question of law.").

812 F.2d 288, 290 (6th Cir. 1987); *Cook Cnty. v. Wolf*, 962 F.3d 208, 221 (7th Cir. 2020); *Colorado v. EPA*, 989 F.3d 874, 883 (10th Cir. 2021). To be sure, the Second Circuit has not spoken clearly on the standard required for a Section 705 stay, and many courts that have agreed with the Defendants and the Tribe have done so with what might charitably be described as cursory analysis.

Nonetheless, the Court concludes that the full preliminary injunction showing is required to receive relief under Section 705 in the particular circumstances of this case for two reasons. The first reason is that Section 705 was clearly a codification of an existing equitable power. 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). Legislative history reflects, more specifically, that Section 705 was intended to incorporate the existing doctrine for stays expounded in *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4 (1942). S. Rep. No. 752, 79th Cong., 1st Sess., 27, 44 (1945); *see also* H.R. Rep. No. 1980, 79th Cong., 2d Sess., 277 (1946) (discussing Section 705 as an equitable grant). *Scripps-Howard*, in turn, explained that the power of courts to stay proceedings is part of the "traditional equipment for the administration of justice." 316 U.S. at 9–10.

And in determining when to employ that equipment, the Court has long utilized versions of the four factors collected in *Winter*. *See, e.g.*, *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941) (explaining the long history of consideration of the public interest in determining whether to issue injunction); *State of Alabama v. United States*, 279 U.S. 229 (1929) (preliminarily addressing the merits of appeal from the denial of a preliminary injunction to affirm the denial of a preliminary injunction). Therefore, Section 705

incorporated traditional factors for issuing preliminary relief, including a preliminary look at the merits and a consideration of the public interest. In the modern era, those factors have been expanded upon by the Supreme Court in *Winter,* resulting in the well-known four-part test for whether a preliminary injunction should be granted. That test thus applies here.

The second reason is the reality that, in many cases, "a stay has the practical effect of an injunction." *All. for Hippocratic Med.*, 78 F.4th at 242. In this action, Defendants have already been subject to one court-ordered temporary stay. And the time period required to adequately brief and resolve this action will stretch beyond the normal period contemplated for a stay. *Cf. Bessent v. Dellinger*, 604 U.S. ----, 145 S. Ct. 515, 516 (2025) (Gorsuch, J., dissenting) (explaining that Courts "look behind the label" to determine whether a stay is really a preliminary injunction). And rather than providing for only one remedy, Section 705, by its text, allows "all necessary and appropriate process." An advantage of Section 705, then, is its flexibility. But because of this flexibility, courts utilizing Section 705 should carefully examine the true nature of the relief requested.[62]

The Supreme Court has previously explained that "[a] stay pending appeal certainly has some functional overlap with an injunction, particularly a preliminary one." *Nken v. Holder*, 556 U.S. 418, 428 (2009). Both remedies have the "practical effect of preventing some action before the legality of that action has been conclusively determined." *Id.* Because of these similarities, the Supreme Court has applied essentially the same standard to requests for

[62] The Tribe argues that the State's request for a Section 705 stay is untimely as a matter of administrative law. Tribe's Opp. at 8–9. Because the Court concludes that the State's motion, properly understood, requests a preliminary injunction that may be issued either under Section 705 or Rule 65, the Court does not need to resolve this argument.

stays pending appeal as it has for preliminary injunctions. *Compare Winter*, 555 U.S. at 19, *with Nken*, 556 U.S. at 426. And because preliminary injunctive relief often stretches on for a period of time, courts require a merits-related showing before granting such a motion. Section 705 affords courts a degree of flexibility to adjust the remedy to match the circumstances; in this case, the relief Connecticut seeks is of a sort that requires a merits showing before it may be granted. For these reasons, the Court concludes that the relief that Connecticut seeks is, in reality, a more standard preliminary injunction.

"A preliminary injunction is an extraordinary remedy never awarded as of right," *Winter*, 555 U.S. at 24, and "is one of the most drastic tools in the arsenal of judicial remedies," *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007). "The typical preliminary injunction is prohibitory and generally seeks only to maintain the status quo pending a trial on the merits." *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 34 (2d Cir. 1995). In contrast to "prohibitory" injunctions, an injunction seeking to alter the status quo is considered "mandatory." *N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 36 (2d Cir. 2018). Here, plaintiffs seek only to preserve the status quo, so they seek only a prohibitory injunction. Generally, "[a] party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest." *Id.* at 37; *see also Winter*, 555 U.S. at 21.

"The Second Circuit ha[s] . . . held that *Winter's* four-factor test did not displace the Circuit's own customary (and slightly more flexible) formulation of the preliminary injunction standard." *Rignol v. Yale Univ.*, No. 25-CV-159, 2025 WL 1295604, at *9 n.11 (D. Conn. May

5, 2025) (citing *Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 38 (2d Cir. 2010)). The Second Circuit's standard allows for a preliminary injunction to be granted if a movant fails to show the likelihood of success on the merits described in *Winter* but establishes "both serious questions on the merits and a balance of hardships decidedly favoring the moving party." *Id*. In *Citigroup*, the court reasoned:

> If the Supreme Court had meant for [its recent cases discussing the preliminary injunction standard] to abrogate the more flexible standard for a preliminary injunction, one would expect some reference to the considerable history of the flexible standards applied in this circuit, seven of our sister circuits, and in the Supreme Court itself . . . . [O]ur standard has survived earlier instances in which the Supreme Court described the merits prerequisite to a preliminary injunction as a "likelihood of success" without specifically addressing the content of such a "likelihood[.]"

598 F.3d at 38.

The Supreme Court has not endorsed any lesser standard than a "likelihood" of success in the years since *Winter*. Nonetheless, the Second Circuit has repeatedly "cautioned District Courts against preemptively declaring that our caselaw has been abrogated by intervening Supreme Court decisions." *Packer on behalf of 1-800-Flowers.Com, Inc. v. Raging Cap. Mgmt., LLC*, 105 F.4th 46, 54 (2d Cir. 2024). As a district court, this Court remains bound by the "serious questions" standard until the Second Circuit (at the Supreme Court's command or of its own volition) holds otherwise.

In order to receive a preliminary injunction, therefore, the State "must establish (1) irreparable harm; (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party; and (3) that a

preliminary injunction is in the public interest." *Hercules Pharms., Inc. v. Cherne*, 2025 WL 1099431, at *1 (2d Cir. Apr. 14, 2025) (summary order).

B. Irreparable Harm

A showing of irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009). "Speculative, remote or future injury is not the province of injunctive relief." *Los Angeles v. Lyons*, 461 U.S. 95, 111-12 (1983). To satisfy the irreparable harm requirement, "the moving party 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.'" *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 80 (2d Cir. 2024). "Thus, irreparable harm exists where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied." *Id.*

The State offers, broadly, three sorts of irreparable harms that it believes satisfy this requirement. One of these arguments is convincing; two are not. First, the State contends that it would "immediately and irreparably interfere with the State's sovereign interests in its territory" if Defendants take title to the land at issue.[63] Second, the State avers that its rights to notice and comment will be irreparably harmed if it loses sovereign power over this territory.[64]

[63] Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 11.

[64] *Id.*

Third, the State argues that if Defendants take title to the land, this Court may lose the ability to order relief in this action.[65]

The State's first argument is its most convincing. The State identifies two harms that, it contends, are irreparable because they are of a sort "for which money damages cannot provide adequate compensation," *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (per curiam): "(1) the federal government will have impermissibly interfered with the State's sovereign right to control its territory; and (2) the State will be unable to enforce its duly enacted laws," Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 11.

As explained, it is undoubtedly the case that if the Federal government placed the disputed land parcels into trust, Connecticut would lose the ability to enforce civil and criminal laws in these two parcels of land. Interference with a sovereign's rights has long been held to constitute irreparable harm. "Loss of sovereignty is an irreparable harm," *Georgia v. Pruitt*, 326 F. Supp. 3d 1356, 1367 (S.D. Ga. 2018), particularly where the sovereign is deprived "of those interests without first having a full and fair opportunity to be heard on the merits," *Kansas v. United States*, 249 F.3d 1213, 1227 (10th Cir. 2001). *See also Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018) ("the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State"); *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) ("When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws."); *Texas v. Becerra*, 577 F. Supp. 3d 527, 557 (N.D. Tex. 2021) ("An injury to a state's sovereign interest is 'necessarily' irreparable." (quoting *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th

[65] *Id.*

Cir. 2013))); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, C.J., in chambers) ("Any time [a state is blocked] from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.").

That infringement on a sovereign's ability to exercise governmental power constitutes irreparable harm is so well-established that it is further emphasized by the Tribe's own briefing in this action. The Tribe strongly disputes whether a violation of the State's sovereignty would constitute irreparable harm.[66] But, in balancing the equities and determining whether a preliminary injunction is in the public interest, the Tribe's foremost argument is that "it is well-established that infringements on tribal sovereignty constitute irreparable harm."[67] The Tribe provides no argument that Tribal sovereignty is different from state sovereignty in a manner that renders only harm to Tribal sovereignty irreparable. Of course, important distinctions can easily be drawn between the degree and consequences of historical infringements on Tribal and State sovereignty. Nonetheless, whether harm is of a sort that qualifies as irreparable is a legal question that turns on whether subsequent remedies may redress (or repair) that harm. As the Tribe's argument concedes, infringements on sovereignty are not reparable.[68]

Akiachak Native Community v. Jewell is instructive. Like this action, *Akiachak* presented a situation in which DOI sought to take land into trust for tribal nations. The court there concluded that "a stay is 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

[66] Tribe's Opp. at 10–11.

[67] *Id.* at 33 (collecting cases).

[68] The inverse is likewise true: If the Tribe is right, an injunction would have the effect of irreparably harming *its* sovereign interests. If irreparable harm might exist for opposing parties, then, the stakes of a merits determination are only heightened.

for the Tribes." 995 F. Supp. 2d 7, 17 (D.D.C. 2014) (citing *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 304 F. Supp. 2d 1278, 1287 (D. Wyo. 2004), for the proposition that "infringement on Wyoming's state sovereignty in managing its trails and fish populations caused by a federal regulation constituted irreparable harm").

Defendants argue that much of the authority cited above presented different circumstances. It is true that many of the cases in which infringements on sovereignty arose involved either (1) prohibitions on the ability of sovereigns to enforce specific statutes anywhere in their territory or (2) larger infringements, by scale, on the ability of the sovereign to exercise any governmental power over a jurisdiction. In *Akiachak*, for example, Defendants rightly contend that the contemplated sovereignty invasion included "the potential acquisition of lands in trust across Alaska for hundreds of tribes."[69] That is a substantial distinction in degree of harm, certainly, but it is not a distinction in type of harm. *Akiachak's* difference in degree of harm raised the stakes for both sides in comparison to this dispute, but it does not render the harm of a sort that is any more reparable. Nor does a difference in degree undermine *Akiachak's* fundamental logic that a sovereign's most core power is the power to exercise governmental control and that the denial of that right is not compensable with monetary damages.

Defendants further contend that the harms the State describes as stemming from a violation of its sovereignty are too "remote and speculative" to support a finding of irreparable harm.[70] They, and the Tribe, point to similarities between Connecticut and the Tribe's laws

[69] Def.'s Opp. at 9.

[70] *Id.* at 6–7.

governing ATV usage and other common civil and criminal legal schemes to argue that, if Connecticut is denied the ability to exercise control over this territory, it will not be substantially harmed.[71] This argument is unconvincing. First, at a high level, the harm that Connecticut suffers is certain, not speculative: Connecticut will be denied the ability to exercise governmental power over these lands. Second, undoubtedly, Connecticut and the Tribe do not have identical legal schemes, nor would they exercise their discretion and enforcement priorities in exactly the same fashion. It is the charter of a sovereign to enforce its laws across its territory, and it is not Connecticut's burden to predict what laws might require enforcement on these lands in the future. *Cf. Kentucky v. United States Env't Prot. Agency*, 2023 WL 11871967, at *4 (6th Cir. July 25, 2023).[72]

If the disputed lands are taken into trust by the Federal government, Connecticut loses the ability to exercise governmental power over these lands. That harms Connecticut's interests as a sovereign in enforcing its laws over its territory. Neither the Defendants nor the Tribe offer any argument that, if Connecticut ultimately succeeds in this litigation, such interim harm would be reparable. The potential injury to Connecticut's sovereignty is therefore sufficient, standing alone, to establish irreparable harm.

Connecticut also argues that it will suffer irreparable harm if it is denied its notice and comment rights. But this is either a past injury that could be remediated by, for example, the remand that the State seeks, or it is an injury that is irreparable only because it leads to an

[71] *Id.* at 7–8; Tribe's Opp. at 10–11.

[72] Even if it were, Connecticut notes two "heavily regulate[d]" interests involved in the properties: the regulation of ATV riding, "a dangerous activity," and "wetlands and watercourses," which are regulated in innumerable ways. *See* Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 21.

independently irreparable injury, like the denial of a sovereign's ability to exercise its sovereign powers. The State does not allege with specificity an irreparable harm resulting from the denial of its procedural rights under the APA that does not fall into either of these two categories. At best, the State tries to argue that "'the failure to provide constitutionally sufficient notice is itself irreparable harm.'" Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 13 (quoting *Strouchler v. Shah*, 891 F. Supp. 2d 504, 521 (S.D.N.Y. 2012)). At least in this context, the Court disagrees and concludes that the State's potential injury stemming from a lack of process could be remedied by vacatur of the underlying agency decisions and remand for a renewed determination.

Third, Connecticut argues that it would be irreparably harmed if the Federal government takes the land into trust status because the result of that transfer would be to "complicat[e] judicial review."[73] Specifically, the State contends that "absent a stay, Defendants may take title to the land and argue that, as a result, sovereign immunity bars this Court—or any court—from reviewing their Decisions."[74] Defendants specifically disclaim this theory: "Defendants will do no such thing[.]"[75] And that argument appears to have been explicitly foreclosed by the Supreme Court. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 220–21 (2012). In addition to being bound by *Patchak*, the Defendants are now judicially estopped from raising this sovereign immunity

[73] *Id.* at 17.

[74] *Id.*

[75] Def.'s Opp. at 13.

argument as a result of their representations to the Court. *See Intellivision v. Microsoft Corp.*, 484 F. App'x 616, 619 (2d Cir. 2012) (summary order).

During oral argument, the Tribe raised the *Patchak* argument with respect to the Defendants and correctly noted that, because any relief would run against the Defendants as the party holding the deeds to the lands in trust, whether the Tribe raised sovereign immunity would likely be of no relevance.[76] Perhaps curiously, though, the Tribe again mentioned that it might seek to intervene or join this suit and did not disclaim a desire to raise a sovereign immunity argument in the event it did so.[77] Nonetheless, even if the Tribe did so, the remedy would merely be to dismiss the Tribe as a defendant: the Court cannot conceive, nor does the State offer, a situation in which either the Tribe's entrance into the action or its subsequent dismissal pursuant to sovereign immunity would necessitate the dismissal of the Federal defendants. Therefore, the Court declines to conclude that the State has established sovereign immunity on this ground.

Nonetheless, the State has shown irreparable harm on one important issue: Its sovereign interests in exercising governmental power over lands it believes are its own. Therefore, the Court proceeds to preliminarily evaluate the merits of Connecticut's claims.

C. The merits: whether the Settlement Act extends the IRA to the Tribe

Connecticut must show either "a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party[.]"

[76] Oral Arg. Tr. at 12–13.

[77] *Id.*

Hercules Pharms, 2025 WL 1099431 at *1. The "balance of hardships" prong seems difficult to satisfy where, as here, two sovereigns assert much the same hardship: The denial of their sovereign rights. Short of the sovereign immunity and notice-and-comment arguments that the Court has already rejected, the State has no particular argument for why the balance of hardships tips "decidedly" in its favor.[78]

In this case, then, the State must show a likelihood of success on the merits. That standard does not require a movant to establish likely success to a high degree of certainty: Instead, a "likelihood of success" is "equivalent to [showing] a fair prospect of success." *Labrador v. Poe*, 144 S. Ct. 921, 929 n.2 (2024) (Kavanaugh, J., concurring in the grant of stay).

The State, first and foremost, charges that the Secretary of the Interior lacks the authority to take land into trust on behalf of the Tribe. *See* 25 C.F.R. § 151.10(a)(1). No party now argues that the IRA, standing alone, can provide the basis for the Secretary to take land into trust for the Tribe. Nor could they reasonably do so: The Settlement Act itself states that, at least as of 1983, "[t]he United States has provided few, if any, special services to the [] Tribe and has denied that it had jurisdiction over or responsibility for [the] Tribe." Pub. L. No. 98-134 at § 2(f).

[78] The Court notes that the analysis of whether the balance of the hardships tips decidedly in favor of the moving party is somewhat complicated in this case by the fact that the Tribe is only an "interested party" in this litigation, while the Defendants are federal officials and a federal agency. Based on the underlying reasons for consideration of the relative hardships, the Court concludes both that the United States may assert a hardship on behalf of a subservient sovereign and that the test allows for consideration of harms to interested parties.

An elephant in the room remains: the Second Circuit's holding in *Blumenthal*. In that case, the Circuit proceeded from the assumption that the Secretary could take land into trust status on behalf of the Tribe "pursuant to the Indian Reorganization Act" because the Tribe was under federal jurisdiction at the time of the contemplated trust acquisition. 228 F.3d at 84. The interpretation of the IRA that this analysis relied on was expressly and wholly rejected by the Supreme Court in *Carcieri*. 555 U.S. at 382. Accordingly, the parties and the Tribe all agree that *Blumenthal's* assumption that the Secretary could take land into trust status on behalf of the Tribe is a dead letter and does not stand.[79]

Courts in this District are bound to apply Second Circuit precedent "unless and until its rationale is overruled, implicitly or expressly, by the Supreme Court or [the Second Circuit]." *United States v. Polouizzi*, 564 F.3d 142, 160 (2d Cir. 2009). Here, however, *Carcieri* has expressly overruled the interpretation of the IRA that *Blumenthal* was premised on. The Second Circuit has recognized *Carcieri's* impact on the IRA and has implemented that decision. *See Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556, 564 (2d Cir. 2016) ("only tribes 'under federal jurisdiction' when the land-into-trust law was passed in 1934 are eligible to avail themselves of the entrustment procedures.").

Both the Tribe and the United States agree that this portion of *Blumenthal* has been clearly overruled, and neither defends *Blumenthal's* assumption that the IRA alone supplies the Secretary with the power to take land into trust for the Tribe. Where a Second Circuit

[79] *Blumenthal* further relies, to an unspecified extent, on the now-repudiated *Chevron* deference. 228 F.3d at 93; *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). The Court sees no need, however, to address *Blumenthal's* reliance on *Chevron* to conclude that its holding has been wholly repudiated by the Second Circuit and the Supreme Court.

precedent has been so unmistakably overruled by the Supreme Court, a district court is no longer bound to follow the Circuit. Rather than adhering to an obviously overridden precedent—and making more work for the Second Circuit in the process—the Court agrees with the parties that *Blumenthal's* holding as to the IRA's application to the Tribe maintains no binding force.

Instead of relying on the IRA as the source of entrustment power, the Tribe and the Defendants argue that the Settlement Act affirmatively extended the IRA's land-into-trust power to the Tribe. The Settlement Act at issue here is one of a number of similar settlement agreements enacted, at least in part, via congressional statute. *See generally* Settlement Acts and Other Attempts to Undo Past Harms, 1 Cohen's Handbook of Federal Indian Law at § 2.11[6]. "Many of these cases also presented an interrelated legal issue: whether these tribes were 'federally recognized.'" *Id.* "Federal recognition was [] a provision in many of the settlement acts of the 1970s and []80s, though it was often paired with the extension of state jurisdiction and limitations on tribal authority." *Id.*

The Tribe and the Defendants vociferously argue that the Settlement Act extended the IRA entrustment power to the Tribe. "When interpreting a statute, we begin with the text." *Lackey v. Stinnie*, 604 U.S. ----, 145 S. Ct. 659, 666 (2025). "We must give effect to the text's plain meaning. Plain meaning does not turn solely on dictionary definitions; rather, it draws on the specific context in which that language is used, and the broader context of the statute as a whole." *Jingrong v. Chinese Anti-Cult World All. Inc.*, 16 F.4th 47, 57 (2d Cir. 2021). "Where the plain meaning of the text is clear, our inquiry generally ends there." *Id.*

Additionally, in interpreting any statute implicating the interests of Tribal nations, special considerations apply. As Justice Scalia held:

> When we are faced with these two possible constructions [of a federal statute implicating Tribal interests], our choice between them must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.

Cnty. of Yakima, 502 U.S. at 269 (cleaned up); *see also* Cohen's Handbook at § 2.02 [1] (2019) ("The basic Indian law canons of construction require that treaties, agreements, statutes, and executive orders be liberally construed in favor of the Indians and that all ambiguities are to be resolved in their favor."). However, "[o]nly if we discern ambiguity do we resort first to canons of statutory construction, and, if the meaning remains ambiguous, to legislative history." *United States v. Colasuonno*, 697 F.3d 164, 173 (2d Cir. 2012). Historical sources may clarify when "a statutory term that means one thing today or in one context might have meant something else at the time of its adoption or might mean something different in another context." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 674–75 (2020).

The Settlement Act contains no explicit mention of the IRA. *See* Settlement Act, Pub. L. No. 98-134 (1983). Instead, the Settlement Act discusses trust status only in a few places. The first is in defining the term "reservation" as "the existing reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe." *Id.* at § 3(7). The second is in establishing "in the United States Treasury an account to be known as the Mashantucket Pequot Settlement Fund . . . . The Fund shall be held in trust by the Secretary for the benefit of the Tribe[.]" *Id.* at § 5(a). Later in that same section, entitled the "Mashantucket Pequot Settlement Fund," the Act provides: "As the Fund or any portion thereof is disbursed by the Secretary in accordance with this section, the United States shall have no further trust responsibility to the Tribe or its

members with respect to the sums paid . . . or any property other than private settlement lands or services purchased with these sums." *Id.* at § 5(b)(5).

In two adjacent subsections, the Act provides "[l]ands or natural resources acquired [using settlement funds] which are located within the settlement lands shall be held in trust by the United States for the benefit of the Tribe," *id.* at § 5(b)(7), and "[l]and[s] . . . acquired [using settlement funds] which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such land[,]" *id.* at § 5(b)(8). The final reference to trust status is found near the conclusion of the Act: "lands within the reservation which are held in trust by the Secretary for the benefit of the Tribe . . . shall be subject to the laws of the United States relating to Indian lands, including [the Nonintercourse Act]." *Id.* at § 8(a).

Faced with this statutory scheme, the Second Circuit held in *Blumenthal* that "the Settlement Act read as a whole strongly, if not conclusively, suggests that § [5](b)(8) applies only to lands purchased with settlement funds." 228 F.3d at 89. The Circuit further held:

> [L]and[s] acquired by the Tribe with settlement funds are either automatically taken into trust under § (b)(7) if they are within the boundaries of the settlement lands, or may not be taken into trust if outside those boundaries. The statute is silent with regard to lands, like the contested 165 acres here, not purchased with settlement funds. As to such lands, whether or not they are within settlement land boundaries, the Settlement Act does not apply. The Tribe may apply to the Secretary to take them into trust under the 1934 IRA[.]

Id. at 88. At this point, it is well-established that the Circuit's holding on the application of the IRA's trust power to the Tribe is no longer good law due to an intervening Supreme Court decision. But the Second Circuit's finding that Section 5 of the Settlement Act "is silent" with

respect to lands, like those in dispute in this litigation and in *Blumenthal*, that are outside of the settlement boundaries and are not acquired with settlement funds remains binding.

Defendants and the Tribe locate the power to take land into trust on behalf of the Tribe outside of Section 5. They look to Section 9(a) of the Act: "Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this Act, 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 Act shall be applicable to the Tribe." The United States argues that "Section 9 thus extends all generally appliable statutes to the Tribe that are not inconsistent with the Settlement Act[,]" including the IRA.[80] The State, meanwhile, contends that the IRA is not a law of "general application to Indians or Indian nations, tribes or bands of Indians" because it applies only to a particular subset of Indian tribes.[81]

Like many difficult issues of statutory interpretation, evidence can be found for either Connecticut's interpretation or the interpretation advanced by the Defendants and the Tribe. At this preliminary stage, however, the Court concludes that the text of the Act more clearly supports the view that the Act did not contemplate the extension of the IRA's land-into-trust power to the Tribe.

First, and most importantly, the Court is persuaded that the absence of any reference to the IRA in the text of the Settlement Act is significant. Put simply, the Settlement Act is replete with references to other statutes: The Act expressly incorporates all or part of nine other

[80] Def.'s Opp. at 23.

[81] Pl.'s Mem. in Supp. of Renewed Emer. Mot. at 29.

statutes. *See* Settlement Act §§ 3(1), 3(7), 4(a), 5(b)(3)(C), 5(b)(9), 5(c), 6, and 8(a) (incorporating Ch. 832 of Conn. Gen. Stat.,, Chapter 824 of Conn. Gen. Stat.,, the Trade and Intercourse Act of 1790 (1 Stat. 137, 138), a federal Act of June 24, 1938 (52 Stat. 1037), the Condemnation Act of 1888 (25 Stat. 357), a federal Act of February 26, 1931 (46 Stat. 1421), and the Internal Rev. Code of 1954, (25 U.S.C. 1326 and 25 U.S.C. 177)). Yet the Indian Reorganization Act is absent from the Settlement Act entirely. The approach to statutory extension and incorporation taken by the Settlement Act demonstrates a clear understanding of how to explicitly incorporate significant federal laws; and, yet, the IRA is entirely absent.

The absence of any reference to the IRA is particularly notable in light of the IRA's particular significance in the scheme of federal Indian law. One well-established principle of statutory interpretation is that elephants do not hide in mouseholes; as applied here, incorporation of "'probably the most important single statute affecting Indians . . . since its passage'" is not likely to be found in a nonspecific provision adopting statutes of general applicability. *E.E.O.C. v. Peabody W. Coal Co.*, 773 F.3d 977, 983 (9th Cir. 2014) (quoting Elmer R. Rusco, A FATEFUL TIME: THE BACKGROUND AND LEGISLATIVE HISTORY OF THE INDIAN REORGANIZATION ACT, at ix (2000)). That principle is all the more powerful when compared to the Settlement Act's careful incorporation of any number of similarly broad but less important federal statutes. As a result, the Court concludes that the absence of any Settlement Act language explicitly incorporating the IRA is powerful evidence in favor of the State's argument against the incorporation of the IRA.

Defendants and the Tribe rejoin that the absence of any explicit reference to the IRA in the Settlement Act is insignificant and, in fact, is instead consistent with their view that the IRA was understood to be incorporated as a law of "of general application to Indians or Indian

nations, tribes or bands of Indians which are not inconsistent with any specific provision of this Act shall be applicable to the Tribe." Settlement Act at § 9(a). It is true that, legislating in a pre-*Carcieri* backdrop, Congress would likely have presumed that the IRA's entrustment power applied to any tribe "under federal jurisdiction" at the time of the contemplated acquisition. But this argument nonetheless fails for two reasons.

First, contemporaneous history from other Settlement or Restoration Acts indicates that whether the beneficiary of congressional action in that era was extended IRA benefits was resolved on a case-by-case basis. For example, consider the Coquille Restoration Act (Pub. L. No. 101-42, 103 Stat. 91 (June 28, 1989)) and Auburn Indian Restoration Act (Pub. L. No. 103-434, 108 Stat. 4533 (Oct. 31, 1994)). Those acts—at Sections 3(a) and 202(a), respectively—appear essentially identical to Section 9(a) of the Settlement Act. All three contain similar "laws of general application" clauses. But, for these two restoration acts, Congress explicitly added language extending the IRA to supplement the "general application" provisions. *See* Coquille Restoration Act at § 3(e) and Auburn Indian Restoration Act at § 202(e). Defendants argue that because these bills are restoration acts, they presented different considerations, including a need to affirmatively restore stripped IRA protections. This is a reasonable response; nonetheless, the nearly identical language of the various statutes indicates that the drafters of these later acts felt that, at a minimum, it was ambiguous whether earlier acts contemplated access to the IRA's powers without an explicit extension of the IRA.

On the other hand, as Defendants point out, the Maine Indian Claims Settlement Act, Pub. L. 96-420 (Oct. 10, 1980), explicitly precludes extension of the IRA to the tribes covered by that Act and therefore represents "an obvious demonstration that Congress knew how to prohibit the Secretary from taking into trust any lands outside of specifically designated

settlement lands." *Blumenthal*, 228 F. 3d at 90. Enacted just three years before the Settlement Act, the Maine Act was undoubtedly a model for the subsequent legislation regarding the Mashantucket Pequot. And yet, as Connecticut points out in response, Congress also knew how to explicitly *extend* the IRA to a tribe, as it did twice in the same year as the Settlement Act and once five years prior.[82]

The jumbled history of statutes from the years around the Settlement Act provides only inconclusive evidence as to the proper interpretation of the Act and emphasizes the importance of a case-by-case determination of whether a tribe is covered by the IRA. Here, the first evidence of the DOI's interpretation of the Settlement Act is persuasive. *See* Memorandum to Bill Ott, Area Director, Eastern Area, BIA from Regional Solicitor, Southeast Region re: Acquisition of Non-Settlement Lands—Mashantucket Pequot Tribe (Jan. 28, 1988).[83] In a 1988 memorandum, the DOI—through the BIA—examined Section 5 of the IRA and concluded that legislative history and the text of the Settlement Act did not contemplate extension of the IRA to the Mashantucket Pequot. *Id.* This nearly contemporaneous DOI opinion is persuasive evidence as to how the DOI viewed the individual determination of whether the congressional action regarding the Mashantucket Pequot extended the IRA to that tribe.

Second, the plain text of the Section 9(a) of the Settlement Act—laws "of general application to Indians or Indian nations, tribes or bands of Indians"—does not obviously

[82] *See* Pascua Yaqui Indians Act, P.L. 95-375, 92 Stat. 712 (Sept. 1978); Texas Band of Kickapoo Act, P.L. 97-429, 96 Stat. 2269 (Jan. 8, 1983); Indian Land Consolidation Act, 25 U.S.C. § 2202 (Jan. 12, 1983).

[83] Available at A-174.

encompass the IRA. Despite the fact that the IRA's land-into-trust power was understood to apply to any tribe under federal jurisdiction at the time of the acquisition, there remained a large number of "nations, tribes, or bands of Indians" to whom the IRA's entrustment power did not extend. The Tribe argues, with citation to dictionaries, that "general" does not mean "universal." *See* Tribe's Opp. at 16 (citing Ballentine's Law Dictionary (3d ed. 1969) and the Oxford English Dictionary (2023 ed.)). As the State points out, though, dictionaries are not unanimous on this point. *See, e.g.*, *General Law*, Ballentine's Law Dictionary (3d ed. 1969) ("[a] statute having a uniform operation, that is a statute operating equally or alike upon all persons, entities, or subjects within the relations, conditions, and circumstances prescribed by the law, or affected by the conditions to be remedied.").

The Tribe's best argument is found in its citation to the definition of a "general law" provided in Black's Law Dictionary: A "general law" is one that "purports to apply to all persons or places of a specified class." *Law*, Black's Law Dictionary (12th ed. 2024). It is not just any "general law" that the Settlement Act incorporates: the Act incorporates laws that apply generally to "Indians or Indian nations[.]"

And clearly, the IRA does not apply to all tribes: As discussed above, Congress took a case-by-case approach to extending IRA coverage to tribes in the latter-half of the twentieth century, and the extension of IRA status was a complicated part of these negotiations. Instead, as the Tribe concedes, the IRA contains a definitions section establishing criteria for determining which Indians and tribes the IRA applies to in the absence of a specific, determinative congressional enactment. *See* 25 U.S.C. § 5129.

Thus, the IRA does not cover all tribes of the class specified in the Settlement Act's text. Section 9 of the Act extends "laws . . . of general application" and then provides the

specified class contemplated in the Black's Law definition: "Indians or Indian nations, tribes or bands of Indians." The IRA, on the other hand, defines "tribe" in a narrower way: A tribe for IRA purposes is "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." 25 U.S.C. § 5129. Similarly, the IRA limits the definition of an "Indian" for purposes of determining IRA coverage to "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation." *Id.*

The Tribe cannot so easily modify the "specified class" included in the Settlement Act's text to add the additional modifiers included in the IRA's much narrower specified classes of Indians and tribes. Undoubtedly—as the congressional actions discussed herein demonstrate—a large number of tribes flunked the IRA's definition and, even under a pre-*Carcieri* understanding, were not covered by the IRA. Put otherwise, the Settlement Act defines the specified class as all Indian tribes, while the IRA defines the narrower specified class of "only those Indian tribes that meet certain criteria." Therefore, the IRA is not a law that purports to apply to all of the class specified in the Settlement Act, and the IRA is thus likely not a law "of general application" for purposes of the particular Settlement Act at issue in this litigation.

The Tribe and the Defendants' arguments that the IRA was a law of general application for Settlement Act purposes, then, faces serious obstacles. With doubts as to that basis for concluding that the Settlement Act extended the IRA, at this stage, the evidence of the Act's meaning that appears most probative is the absence of any clear reference to the IRA in the text of the Settlement Act, even in the face of numerous explicit incorporations of other federal

and state statutes. As a result, the Court concludes that the State has shown—by a slim margin—a fair prospect, or a likelihood, of success on the merits.[84]

D. Whether an injunction is in the public interest and the balance of the equities

"'The first two factors [of the injunction test] … are the most critical,' and where, as in this case, the government is the party opposing the stay, the third and fourth factors 'merge.'" *Sarr v. Garland*, 50 F.4th 326, 335 (2d Cir. 2022) (quoting *Nken*, 556 U.S. at 434–35). In analyzing the balance of the equities and whether injunctive relief would be in the public interest, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24.

Here, both the State and the Tribe argue that the public interest rises and falls with the merits, because the public interest lies with whichever sovereign should properly maintain jurisdiction over the two parcels at issue. And, as previously discussed, the parties assert similar injuries involving the denial of their sovereign rights: while denying a stay would divest the State from enforcing its laws on the parcels being acquired in trust, granting a stay would prevent the United States from acting in accordance with laws governing its duty to acquire the parcels. Because the Court has determined that the merits tilt slightly in Connecticut's favor at this nascent stage, the public interest weighs in favor of an injunction.

III. CONCLUSION

At this preliminary phase and without the benefit of a significant period for review and reflection, the Court concludes that Connecticut has made the showing required to warrant a preliminary injunction.

[84] The Court has carefully considered the other arguments raised by the Parties in this action.

Therefore, the Court **GRANTS** Connecticut's emergency motion for a stay (ECF No. 35). **IT IS HEREBY ORDERED** that pursuant to 5 U.S.C. § 705 and Federal Rule of Civil Procedure 65(a), Defendants and those acting in concert with them are **PRELIMINARILY ENJOINED** from acquiring title or deed to the parcels identified as 119 and 159 Indiantown Road in Ledyard, Connecticut, and from transferring title or the like into trust status for the Tribe. This preliminary injunction shall remain in effect until further order of the Court.

The Court notes that Defendants are enjoined only from taking the final step of acquiring the land: Defendants may take any other preparatory steps necessary to enable the Federal government to swiftly take title to the land in question should it ultimately succeed in this action.

The Court further **ORDERS** the following schedule for this litigation: the Parties may move for summary judgment **on or before July 30, 2025;** opposition briefs may be filed **on or before August 20, 2025;** and reply briefs may be filed **on or before August 27, 2025.** Absent extraordinary and unforeseen circumstances, the Court will issue a ruling in this action before **October 7, 2025**.

SO ORDERED.

Hartford, Connecticut
July 10, 2025

/s/Vernon D. Oliver
VERNON D. OLIVER
United States District Judge