IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SHINNECOCK INDIAN NATION, a federally recognized Indian Tribe, Plaintiff, v. KATHLEEN C. HOCHUL, in her official capacity as Governor of New York; LETITIA A. JAMES, in her official capacity as New York State Attorney General; MARIE THERESE DOMINGUEZ, in her official capacity as Commissioner of the New York State Department of Transportation; THE HONORABLE MAUREEN T. LICCIONE, in her official capacity as Justice of the Supreme Court of the State of New York, Suffolk County, Defendants.	Civil Action No. 2:25-cv-7034

THE SHINNECOCK INDIAN NATION'S MEMORANDUM OF LAW IN SUPPORT OF ITS APPLICATION FOR A PRELIMINARY INJUNCTION

On the Brief:

LAW OFFICES OF TELA TROGE, PLLC.
Tela L. Troge
26 Hill Street # 124
Southampton, NY 11968
Telephone: (631) 745-6203
Email: telatroge@shinnecock.org

BYRNES, O'HERN & HEUGLE LLC
John F. Byrnes, Esq.
NJ Attorney ID# 412952022

195 East Bergen Place
Red Bank, New Jersey 07701
(732) 219-7711
jbyrnes@byrnesohern.com

—and—

DRAGONFLY LAW GROUP, P.C.
Judith A. Shapiro
7059 Blair Rd., NW Suite 200
Washington, DC 200127
Telephone: (202) 257-6436
Email: jshapiro@dflylaw.com

Thomas J. Nitschke
731 St. Joseph St., Suite 230
Rapid City, SD 57701
Telephone: (605) 646-0189
Email: tomn@dflylaw.com

Attorneys for Plaintiff, Shinnecock Indian Nation

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PRELIMINARY STATEMENT

The Shinnecock Indian Nation ("Nation") requests immediate relief to enjoin Defendants' enforcement of the New York Highway Law on the Nation's federally-protected Westwoods property. The history of this dispute leaves little doubt that the State wants the Nation's Monument Signs at Westwoods shut down and permanently removed. To achieve its goal, the State has demonstrated a willingness to ignore the findings of the U.S. Department of the Interior and to cling false assertions concerning the Signs' safety and a purported 1959 easement that runs over and across Westwoods. The negative consequences of the State's position now loom larger due to the issuance of a contempt order in the Supreme Court of Suffolk County in New York, and the threat of further sanctions.

This federal court occupies a unique position given the nature of this dispute. The State of New York and one of its Courts refuse to accept the restricted fee status of the Nation's land, and their decisions have brought the Nation to a point where the stakes are high and the consequences are permanent. Ignoring the federal protections afforded to restricted fee lands and claiming that the Monument Signs are somehow unsafe, the State filed a legal action to enforce its Highway Law. The State pursues this relief relying upon a false claim that New York State has a lawful easement over and across the Nation's Westwoods property for Sunrise Highway. Before further sanctions are ordered and permanent harm is inflicted upon the Nation and its members, an injunction should be issued to allow for a determination, in federal court, as to the legality of the State's purported 1959 easement.

Now, the Nation prays for immediate injunction relief from this Court to prevent Defendants' infringement on its tribal sovereignty over its federally-protected restricted fee lands at Westwoods, the Nation's irreparable loss that will occur absent an injunction, and the public interest's in ensuring government agencies abide by federal laws and regulations. If the Court does not restrain the State, the State will shatter the status quo that has persisted for hundreds of years on the east end of Long Island and plunge the Nation into financial ruin as it fails to realize revenue from operating the

Monument Signs, suffer reputational loss that threatens future economic development projects of the Nation, and endure the indignity of the State trampling on its tribal sovereignty. Federal law protects the Nation on its restricted fee lands. The Nation does not seek to uproot the Sunrise Highway; rather, it merely asks to benefit from the passing traffic traveling over its ancestral territory. The Court should issue temporary injunction relief to preserve the status quo.

STATEMENT OF FACTS

The Nation relies on the facts in its Amended Complaint and accompanying affidavits and exhibits, as well as those facts and arguments made in its initial application for temporary restraints.

ARGUMENT

I. THE MOTION FOR PRELIMINARY INJUNCTION SHOULD BE GRANTED.

A. The Nation Seeks a Prohibitive Injunction Because It Seeks To Preserve the Status Quo Between These Two Sovereigns.

Case law within the Second Circuit demonstrates that the Court should treat the injunction sought as only prohibitive. Any decision that includes the existence of state court litigation as part of the status quo between these two sovereigns already concedes the jurisdictional question in favor of the State and strips the Nation of its right to a federal forum to resolve this dispute over its sovereignty and restricted fee lands at Westwoods. Even if the Court treats this injunction as mandatory (even though it should not), the Nation still meets the higher standard.

In the Second Circuit, 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." *N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018). The Second Circuit classifies the typical preliminary injunction as "prohibitory" because an injunction generally seeks only to maintain the status quo between the parties pending a trial on the merits. *See*

Tom Doherty Assocs., Inc. v. Saban Entm't, Inc., 60 F.3d 27, 34 (2d Cir. 1995). In rare cases where the movant seeks to modify the status quo by virtue of a "mandatory preliminary injunction" or where the injunction being sought "will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits," a higher standard applies. *Yang v. Kosinski*, 960 F.3d 119, 127-28 (2d Cir. 2020). In mandatory injunction cases, "the movant must also: (1) make a strong showing of irreparable harm, and (2) demonstrate a clear or substantial likelihood of success on the merits." *Id.* at 128.

Generally, courts consider an injunction mandatory where it directs the entity enjoined to take some affirmative action like making a payment to the movant. *See, e.g.*, *Paxi, LLC v. Shiseido Americas Corp.*, 636 F. Supp. 2d 275, 281 (S.D.N.Y. 2009) (holding that an injunction requiring defendant supplier to actually supply a new store was mandatory); *Katzenberg v. First Fortis Life Ins. Co.*, 500 F. Supp. 2d 177, 189-90 (E.D.N.Y. 2007) ("[P]laintiff seeks . . . a mandatory injunction directing defendant to pay him all benefits due under the Policy 'both retroactively and prospectively.'"); *Kutas v. Regan*, 712 F. Supp. 445, 447 (S.D.N.Y. 1989) ("The relief sought in the complaint is . . . a mandatory injunction directing defendant to pay plaintiff a pension retroactive to his retirement."). The Second Circuit has instructed that a preliminary injunction is mandatory where it seeks to alter the status quo. *Daileader v. Certain Underwriters at Lloyd's London Syndicate 1861*, 96 F.4th 351, 356 (2d Cir. 2024).

Crucially, the Second Circuit recently observed in *Daileader* that the status quo for purposes of a mandatory injunction is not necessarily the status quo immediately preceding the motion for an injunction, but rather, "the status quo *ante*"—meaning "the last actual, peaceable[,] uncontested status which preceded the pending controversy." *Id.* (citation omitted). Importantly, the "'status quo' in preliminary-injunction parlance is really a 'status quo ante.' . . . This special 'ante' formulation of the status quo in the realm of equities shuts out defendants seeking shelter under a current status quo precipitated by their wrongdoing." *N. Am. Soccer League*, 883 F.3d at 37 n.5 (citation omitted). As this

Court has noted, "an injunction which orders a party to perform an action it should previously have performed may be characterized as prohibitory, since it does not change the status quo as it would have existed, absent that party's wrongful action." *Padberg v. McGrath-McKechnie*, 108 F. Supp. 2d 177, 184 (E.D.N.Y. 2000). In *In re Homaidan*, 650 B.R. 372 (Bankr. E.D.N.Y. 2022), the court found an injunction restraining ongoing debt collection efforts against borrowers that had already obtained bankruptcy discharges to be prohibitive, not mandatory. *Id.* at 409.

Here, the Nation seeks a prohibitive injunction because it simply seeks to preserve the status quo ante that existed between these two sovereigns before this dispute arose. *See id.* Just as the court in *In re Homaidan* issued an injunction where the ongoing collection efforts violated the bankruptcy discharge, here, the Court should issue an injunction where the state court proceeding and assertion of state regulatory jurisdiction violates the Non-Intercourse Act and federal law governing restricted fee lands like Westwoods. *See* 650 B.R. at 409. A finding otherwise by this Court would afford the State the benefit of their wrongful conduct in initiating or continuing a dispute once the peace ended where the state court lacks jurisdiction to even hear this dispute in the first place. *See N. Am. Soccer League*, 883 F.3d at 37 n.5. Prior to this dispute, Westwoods was recognized as "Indian Land" and the Nation enjoyed jurisdiction over it. The Court should preserve that status quo and the balance of power between these sovereigns while it decides these important questions of Indian law. *See id.*

Second, the injunction sought does not require the State to take any affirmative action and should therefore be characterized as prohibitive. *See Shiseido Americas Corp.*, 636 F. Supp. 2d at 281 (holding that an injunction requiring defendant supplier to actually supply a new store was mandatory). Unlike in *Katzenberg* or *Kutas*, where the movant sought direct payments, here, the Nation simply seeks to stay the state court proceedings while this Court resolves the federal questions before it. *See Katzenberg*, 500 F. Supp. 2d at 189-90; *Kutas*, 712 F. Supp. at 447. The Nation does not seek dismissal or immediate resolution of the state court proceeding either, so it does not come close to seeking "all

the relief" it seeks in the underlying case such that the higher mandatory standard would apply; rather, this is a preservative prohibitory injunction. *See Yang*, 960 F.3d at 127-28. Indeed, where the injunction does not request all the relief sought and can easily be "undone even if the defendant[s] prevail at a trial on the merits," these factors weigh in favor of framing the injunction as prohibitive. *Id.*

Finally, courts in this Circuit have a long history of issuing injunctions against state court proceedings where they raise important questions of Indian law, and applying the lesser injunctive standard for prohibitory injunctions when affording relief to Indian nations bringing these claims. In *Cayuga Indian Nation of N.Y. v. Seneca County*, 890 F. Supp. 2d 240 (W.D.N.Y. 2012), *aff'd*, 761 F.3d 218 (2d Cir. 2014), the court granted the Indian nation an injunction enjoining a state-court tax foreclosure proceeding, pursuant to the All-Writs Act, 28 U.S.C. § 1651(a), finding an exception to the Anti-Injunction Act, 28 U.S.C. § 2283, for the Indian nation's Non-Intercourse Act claim asserted with respect to the parcels upon which the county sought to foreclose. *Id.* at 242. The court did not apply a higher standard for analyzing the injunction sought and instead issued it to restrain the ongoing state foreclosure proceeding where the nation enjoyed sovereign immunity from suit. *Id.* at 248.

Similarly, in *Bowen v. Doyle*, 880 F. Supp. 99 (W.D.N.Y. 1995), *aff'd*, 230 F.3d 525 (2d Cir. 2000), the court applied the lesser likelihood of success analysis to an injunction where the Indian plaintiff sought to enjoin ongoing state court contempt proceedings where said proceedings infringed on Indian sovereignty and self-government. *Id.* at 112. The court specifically found that the questions of sovereignty and the nation's internal affairs were "obviously questions of federal Indian law that directly affect tribal sovereignty and which should, therefore, be resolved in the first instance by the federal courts." *Id.* at 131. Indeed, the court held that the "Anti-Injunction Act has no application where an injunction against a state court is necessary to defend a federal court's judgments from inconsistent state directives." *Id.*

Here, the Court should apply the lesser standard for examining prohibitory injunctions

because the Nation presents an important question of Indian sovereignty that should "be resolved in the first instance by federal courts." *Bowen*, 880 F. Supp. at 131. The Nation requires the injunction "to enjoin state court proceedings … to preserve the integrity of [its] sovereignty," *Tohono O'Odham v. Schwartz,* 837 F. Supp. 1024, 1028-29 (D. Ariz. 1993), and thus the Court should exercise jurisdiction over this important dispute between sovereigns.

B. The Nation is Substantially Likely to Succeed on the Merits of its Claims.

1. The Non-Intercourse Act Provides a Private Right of Action to Sue Defendants.

Courts have long recognized that the Non-Intercourse Act provides tribes with a private right of action to enforce the Act's protections against the alienation of Indian lands. In *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), the Supreme Court held that the Oneida Indian Nation had stated a federal cause of action cognizable under 28 U.S.C. § 1331 in claiming a right of possession of certain lands that it alleged had been ceded to New York State "without the consent of the United States and hence ineffective to terminate the Indians' right of possession under," *inter alia*, the Non-Intercourse Act. *Id.* at 664-65; *Canadian St. Regis Band of Mohawk Indians v. New York*, 573 F. Supp. 1530, 1534 n.1 (N.D.N.Y. 1983) (stating that the Second Circuit in *Oneida Indian Nation* held that the tribe "had a private right of action to enforce the Trade and Intercourse Act"); *Cayuga Indian Nation of N.Y. by Patterson v. Cuomo*, 565 F. Supp. 1297, 1323 (N.D.N.Y. 1983) (explaining that a tribe "may infer a private right of action under the [Non-Intercourse Act]").

Many Indian nations on the east coast have brought Non-Intercourse Act claims prior to being federally recognized to vindicate unlawful land conveyances made without the United States' consent. *See Mohegan Tribe v. Connecticut*, 638 F.2d 612, 614 (2d Cir. 1980), *cert. denied*, 452 U.S. 968 (1981) ("[N]umerous suits have been brought by Indian tribes still residing in the eastern parts of the United States…. These suits have been based upon the claim, after a century and a half of occupation by non-

Indians, that the states in the East entered into treaties with and purchased land from Indian tribes after the passage of the Nonintercourse statute, which by its terms apparently forbade such transactions without the participation of the federal government. To date, the Indians have been largely successful in their legal battles regarding their claims to the eastern lands.").[1] In 1983, DOI identified the Nation has having a potential pre-1966 Non-Intercourse Act claim. 48 Fed. Reg. 13,698, 13,920 (Mar. 31, 1983). The Nation clearly has a private right of action to assert a Non-Intercourse Act against Defendants for their ongoing violation of federal law.

2. The Non-Intercourse Act Does Not Require Indian Lands to be Formally "Designated" by the United States.

The Non-Intercourse Act applies to lands that have not been formally "designated" Indian land by the United States at the time of the unlawful conveyance. The "validity" of a Non-Intercourse Act claim depends on a tribe's ability to show "a post-Constitution land interest which was taken from them … in violation their rights under that Act." *Oneida Indian Nation of N.Y. v. New York*, 691 F.2d 1070, 1095 (2d Cir. 1982).

In *Mohegan Tribe v. Connecticut*, the Mohegan Tribe—which was not a federally recognized Indian tribe at the time—brought a Non-Intercourse Act claim against the State of Connecticut "to regain possession of some 2,500 acres of land in the Town of Montville, Connecticut." 638 F.2d at 614. The State of Connecticut contended that the Non-Intercourse Act "was never meant to apply to land outside Indian country but was designed to assure that land on the Western frontier of the country would be obtained from the Indians solely through federal treaties." *Id.* at 618. The Second Circuit held that the Non-Intercourse "must … be read as applying to all Indian lands." *Id.* at 621. The court stated that "the fact that the federal government disclaimed responsibility" for tribes on the east coast

[1] A table of Indian land claims by tribes on the east coast is attached to the Affidavit of Tela Troge, Esq. The Table reflects Congressional settlement of tribal land claims following tribal acknowledgment, including Mohegan in 1994. See Troge aff.

"is not determinative" on the protections afforded to tribes under the Non-Intercourse Act. *Id.* at 623.

The Second Circuit's decision in *Golden Hill Paugusett Tribe of Indians v. Weicker*, 39 F.3d 51 (2d Cir. 1994) is highly instructive in this case to show how standing to bring a Non-Intercourse Act claim enables a tribe to seek relief for past unauthorized Indian land conveyances. In *Golden Hill*, "a group of American Indians" that was not a federally recognized tribe brought a claim under the Non-Intercourse Act seeking to invalidate an 1802 land transaction involving Connecticut without the United States' consent. *Id.* at 54. Instead of dismissing Golden Hill's Non-Intercourse Act claim, the Second Circuit remanded the case to the district court to stay proceedings pending the BIA's determination of Golden Hill's tribal status. *Id.* at 61. The court explained the "BIA's resolution of these factual issues regarding tribal status will be of considerable assistance to the district court in ultimately deciding Golden Hill's Nonintercourse Act claims." *Id.* at 60. *Golden Hill* underscores how once tribal status is first resolved, a tribe is able to vitiate its rights under the Non-Intercourse Act concerning past land transactions unauthorized by the United States. *See also Troge Aff.* Exhibit A.

The First Circuit's decision in *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975) is also instructive on how the formal designation of Indian lands by the federal government is not prerequisite to bringing a Non-Intercourse Act claim. In that case, the Joint Tribal Council of the Passamaquoddy Tribe, a tribe not recognized by the federal government in the State of Maine, brought suit "seeking a declaratory judgment that the Tribe is entitled to federal protection under the Indian Nonintercourse Act." *Id.* at 372. The First Circuit determined the Passamaquoddy Tribe is a "tribe" within the meaning of the Non-Intercourse Act even though the "Federal Government disavow[ed] any relationship with" the Passamaquoddy Tribe. *Id.* at 377. Because the "United States never sufficiently manifested withdrawal of its protection so as to sever any trust relationship" with the Passamaquoddy, the court concluded that the Non-Intercourse provides protection to the Tribe. *Id.* at 380.

3. The Nation is Substantially Likely to Prevail on the Merits of its Non-Intercourse Act Claim.

The Nation is almost certain to prevail on the merits of its Non-Intercourse Act claim for declaratory and injunctive relief in this action. The Second Circuit has determined that the specific scope of the Nation's requested declaratory and injunction relief sought against the named State officials in this case falls within the *Ex parte Young* exception to Eleventh Amendment immunity. In *Seneca Nation v. Hochul*, 58 F.4th 664 (2d Cir. 2023), the tribe contended that a 1954 easement over its tribal land on which New York State built a portion of the New York State Thruway violates the Non-Intercourse Act, and "federal law regulating easements across Indian lands." *Id.* at 667.

Like the Nation in this case, the tribe in *Seneca Nation* sought an injunction requiring State officials to "obtain a valid easement" over its tribal lands, and a declaration that State officials are "violating federal law by not obtaining a valid easement for the portion" of the Thruway running over and across the tribe's lands. *Id.* at 667-68. The Second Circuit held that the tribe's "complaint alleges an ongoing violation of federal law and seeks prospective relief" and falls within the *Ex parte Young* exception to New York State's Eleventh Amendment immunity. *Id.* at 672. Likewise, the Nation's claims for declaratory and injunctive relief sought in this case fits within the *Ex parte Young* exception to New York State's Eleventh Amendment immunity, and the Nation may properly seek relief to declare the purported 1959 easement invalid, and an injunction requiring the Defendants to obtain a valid easement approved by the Secretary of the Interior over and across Westwoods.

The Nation's claim that the purported 1959 easement violates the Non-Intercourse Act is likely to succeed on the merits. Courts have set forth the following elements of a Non-Intercourse Act claim: "[T]o establish a violation of the Non-Intercourse Act," a tribe must establish that: (1) "they are an Indian tribe"; (2) "the land at issue was tribal land at the time of the conveyance"; (3) "the United States never approved the conveyance"; and (4) "the trust relationship between the United

States and the tribe has not been terminated." *Seneca Nation of Indians v. New York*, 382 F.3d 245, 258 (2d Cir. 2004); *Golden Hill*, 39 F.3d at 56. The Nation meets all of these elements.

First, the Nation is an "Indian nation" for purposes of the Non-Intercourse Act. The Non-Intercourse Act applies to "any Indian nation or tribe of Indians" 25 U.S.C. § 177. The Act "does not define 'Indian nation' or tribe of Indians' for purposes of that Act." *Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York*, 278 F. Supp. 2d 313, 326 (N.D.N.Y. 2003). The Nation is a federally recognized Indian nation, 89 Fed. Reg. 99,899, 99,901 (Dec. 11, 2024), and is thus an Indian nation under the Non-Intercourse Act.

Second, at the time of the purported 1959 easement, Westwoods was and continues to be tribal land. As former Assistant Secretary of Indian Affairs Bryan Newland explained, the Nation's Westwoods property "is and has always been restricted fee land held by the Nation." Amended Compl., Ex. B, ECF No. 1-6, 22. Furthermore, all available land records and have recognized Westwoods as Indian land. Suffolk County tax maps between 1929 and 1993 refer to Westwoods as "Indian lands," "Shinnecock Indian Reservation," or "Shinnecock Tribe." Amended Comp. ¶¶ 32-36, ECF No. 22. There is no record of any challenge to the public records identifying Westwoods as "Indian land." *Id.* ¶ 45. The purported 1959 easement agreement itself identifies the "Shinnecock Tribe" as the "reputed owner" of certain "Indian Lands." *Id.* ¶ 51. There is no question that Westwoods was "tribal land" at the time of the purported 1959 easement.

Third, there is no evidence that the United States ever approved the purported 1959 easement. "Relying on the strong policy of the United States 'from the beginning to respect the Indian right of occupancy,' the [Supreme] Court [has] concluded that it 'certainly would require plain and unambiguous action to deprive the Indians of the benefits of that policy.'" *Oneida Cnty. v. Oneida Indian Nation*, 470 U.S. 226, 248 (1985) (citation omitted). The United States' consent must be "plain and

ambiguous," and will not be "lightly implied." *Id.* There is no evidence whatsoever that the United States ever approved the purported 1959 easement. Amended Compl. ¶ 63, ECF No. 22.

Fourth, the trust relationship between the Nation and the United States continues to exist. "When a tribe is federally recognized, it confers a suit of federal protections." *Agua Caliente Tribe of Cupeno Indians of Pala Reservation v. Sweeney*, 932 F.3d 1207, 1213 (9th Cir. 2019). Federal recognition is "a prerequisite" to "the protection, services, and benefits of the Federal Government available to those that quality as Indian tribes and possess[ing] a government-to-government relationship with the United States." 25 C.F.R. § 83.2(a). Because the Nation is a federally recognized Indian tribe, the trust relationship between the Nation and the United States continues to exist.

In sum, the Nation shows that it is a federally recognized Indian tribe with an established trust relationship with the United States, Westwoods was tribal land at the time of the purported 1959 easement, and the purported 1959 easement lacked requisite federal consent. There is no requirement that the Nation had to federally recognized in 1959 at the time of the purported easement to be an "Indian nation or tribe of Indians" afforded protections under the Non-Intercourse Act. Cases like *Mohegan Tribe*, *Golden Hill*, and *Passamaquoddy* establish that an Indian nation has standing to bring a Non-Intercourse Act claim when it is an "Indian nation or tribe of Indians" under the Act and such Indian nation may challenge any post-1790 conveyance of Indian land not authorized by the United States. The Nation has shown that it is substantially likely to prevail on its Non-Intercourse Act claim.

4. The Nation is Substantially Likely to Succeed on the Merits of its Federal Law Preemption Claim.

Because New York seeks to regulate activity on federally-protected restricted fee land, New York law is pre-empted by federal law. "[Q]uestions of pre-emption in [Indian law] are not resolved by reference to standards of pre-emption that have developed in other areas of the law." *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176 (1989). "State jurisdiction is pre-empted by the operation of federal law it if interferes or is incompatible with federal and tribal interests reflected in

federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *New Mexico v. Mesclalero Apache Tribe*, 462 U.S. 324, 334 (1983). The question of whether "federal law preempts the assertion of State authority … calls for a particularized inquiry into the nature of the state, federal, and tribal interests at stake." *Id.* at 333.

Numerous cases have addressed tribal claims that federal law preempts state jurisdiction. *See, e.g., id.* at 325 (holding that "application of New Mexico's hunting and fishing laws is preempted by the operation of federal law"); *Segundo v. City of Rancho Mirage*, 813 F.2d 1387, 1393 (9th Cir. 1987) (municipality lacks authority to impose its rent control ordinance on trust land); *Santa Rose Band of Indians v. Kings Cty.*, 532 F.2d 655, 658 (9th Cir. 1975) (municipality lacks authority to impose its zoning ordinance on trust land); *Cayuga Indian Nation v. Vill. of Union Springs*, 293 F. Supp. 2d 183, 191 (N.D.N.Y. 2003) (finding federal question jurisdiction over suit by tribe seeking "to enjoin municipal government regulation of activities governed by and protected pursuant to federal law" based on preemption); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 206 (1987) (tribe sued state in federal court for declaratory judgment that state lacked authority to enforce its ordinances on Indian land); *Gobin v. Snohomish Cty.*, 304 F.3d 909, 911 (9th Cir. 2002) (Indian tribe and tribal member sought declaration that county lacked jurisdiction to impose its zoning and land use regulations upon on-reservation tribal activity); *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 672 (7th Cir. 2020) (Indian nation sued village for declaratory and injunctive relief that application of local ordinance "is preempted by federal law and that imposition of the Ordinance is an impermissible infringement on the Nation's power of self-government").

Well-settled principles of federal Indian law establish that New York State lacks any authority to regulate the activities of the Nation. *McClanahan v. Ariz. Tax. Comm'n*, 411 U.S. 164, 181 (1973) (stating that the state is "totally lacking in jurisdiction" over the Navajo people and its lands, absent

an authorizing act of Congress). Even where Congress has authorized civil and criminal jurisdiction on Indian lands, such statutes do not authorize state and local civil regulatory authority over tribes.

Through 25 U.S.C. §§ 232 and 233, Congress granted New York State limited civil adjudicatory and criminal jurisdiction on tribal lands. In *Bryan v. Itasca Cty.*, 426 U.S. 373 (1976), the Supreme Court determined that Pub. L. 280, a later enacted federal statute using similar language to extend criminal and civil jurisdiction over Indian lands to specific states, must be read to limit such civil authority to civil adjudicatory and not civil regulatory jurisdiction. *Id.* at 390. The New York State Attorney General issued a formal opinion that the State lacked civil regulatory jurisdiction over Indian lands within the State. *See* 1987 N.Y. Op. Atty. Gen. 35 (N.Y.A.G. Dec. 31, 1987) ("Congress has not thereby granted states … civil regulatory authority over Indians on reservations" under U.S.C. § 233). Courts have similarly interpreted 25 U.S.C. § 233. *See United States v. Burns*, 725 F. Supp. 116, 125 (N.D.N.Y. 1989).

The federal regulatory scheme governing rights-of-way across Indian land is comprehensive and entirely preempts the application of New York law at Westwoods. The Indian Right-of-Way Act authorizes the Secretary of the Interior to "grant rights-of-way *for all purposes*, subject to such conditions as he may prescribe, over and across … any lands now or hereafter owned, *subject to restrictions against alienation*, by individual Indians or Indian … nations." 25 U.S.C. § 323 (emphasis added). The Act requires tribal consent for rights-of-way over Indian land. 25 U.S.C. § 324. It provides that "[n]o grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just." 25 U.S.C. § 325. The Act became operative on March 6, 1948, 30 days after it was approved on February 5, 1948. *See* 62 Stat. 18. Intended to "preserv[e] and protect[] … Indian interests," *S. Pac. Transp. Co. v. Watt*, 700 F.2d 550, 554 (9th Cir. 1983), the Indian Right-of-Way Act provides a claim for failure to comply with its terms, *see Loring v. United States*, 610 F.2d 649, 649-51 (9th Cir. 1979) (claims stemming from a right-of-way lacking "consent or approval of the Secretary of the Interior" "ar[o]se under 25 U.S.C. §§ 323-325, which serve to protect Indian lands").

The federal regulations implementing the Indian Right-of-Way Act provide that: "If an individual or entity takes possession of, or uses, Indian land … without a right-of-way and a right-of-way is required, the unauthorized possession or use is a trespass" and "[t]he Indian landowners may pursue any available remedies under applicable law." 25 C.F.R. § 169.413. The regulations state that a right-of-way "does not diminish to any extent … [t]he Indian tribe's jurisdiction over the land subject to, and any person or activity within, the right-of-way." 25 C.F.R. § 169.10(a). "If the tribe owns *any interest* in a tract, it is considered 'tribal land' and the tribe's consent for rights-of-way on the tract is required under 25 U.S.C. § 323 and 324." 80 Fed. Reg. 72,492, 72,497 (Nov. 19, 2015) (emphasis added). "The Federal statutes and regulations governing rights-of-way on Indian lands occupy and preempt the field of Indian rights-of-way." *Id.* at 72,505. "The Federal regulatory scheme is pervasive and leaves no room for State law." *Id.* "Federal regulations cover all aspects of rights-of-way." *Id.*

Because Westwoods is restricted fee lands within the meaning of the Indian Right-of-Way Act and its implementing regulations, and because the Nation has standing to bring a preemption claim in this action, the Nation is thus most certain to prevail on its federal law preemption claim.

II. The Nation Will Suffer Immediate and Substantial Irreparable Harm in the Absence of Preliminary Injunctive Relief.

To establish irreparable harm, "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. Practice P.C.*, 120 F.4th 59, 80 (2d Cir. 2014) (alteration in original) (citation omitted). "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.* (citation omitted)). The moving party must show that "there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." *Kamerling v. Massanari*, 295 F.3d 206,

214 (2d Cir. 2002). The Court should find that the Nation will suffer irreparable harm in the absence of a preliminary injunction for at least four reasons, any on which is sufficient standing alone.

First, the Defendants' enforcement of the New York Highway Law to the Nation's federally-protected Westwoods property is an invasion of tribal sovereignty that plainly constitutes irreparable harm. In particular, "Defendants are violating federal law by attempting to enforce [the] New York Highway Law against sovereign economic activity of the Nation on its restricted fee land in Westwoods." Amended Compl. at 33-34 (Prayer for Relief), ECF No. 22. "Where, … enforcement of a [state] statute or regulation threatens to infringe upon a tribe's right of sovereignty, federal courts have found the irreparable harm requirement satisfied." *Seneca Nation of Indians v. Paterson*, No. 10-cv-687A, 2010 WL 4027795, at *2 (W.D.N.Y. Oct. 14, 2010), *stay vacated on other grounds*, 645 F.3d 154 (2d Cir. 2011); *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005-06 (10th Cir. 2015) (Gorsuch, J.) (holding that a state prosecuting Indians for conduct that occurred on Indian land may constitute an "irreparable injury" because the state's conduct invades tribal sovereignty); *Poarch Band of Creek Indians v. Hildreth*, 656 Fed. App'x 934, 944 (11th Cir. 2016) (finding that state tax assessment of Indian land "would amount to irreparable violation of tribal sovereignty").

"Not only is harm to tribal self-government not easily subject to valuation but also, and perhaps more important, monetary relief might not be available to the tribe because of the state's sovereign immunity." *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1251 (10th Cir. 2001) (affirming district court's granting of preliminary injunction enjoining enforcement of state motor vehicle registration and titling laws with respect to vehicles registered and titled by the tribe); *Blue Lake Rancheria v. Lanier*, 106 F. Supp. 3d 1134, 1140-41 (E.D. Cal. 2015) ("[Tribe] established irreparable harm, because damages would not be available. Indeed, injunctive relief is the only form of relief available to the Tribe; if the Court does not enjoin the liens, Plaintiff would be unable to obtain

damages from Defendants because of the state's own immunity. And this unavailability of alternate remedies makes the harm from the violation of sovereign immunity irreparable.") (citations omitted).

Interference with the Nation's tribal sovereignty on its development of Westwoods where Defendants lack jurisdiction to regulate constitutes an irreparable injury. *See EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1078 (9th Cir. 2001) ("[T]he prejudice of subjecting the Tribe to a subpoena for which the agency does not have jurisdiction results in irreparable injury vis-a-via the Tribe's sovereignty."). In *Wyandotte Nation v. Sebelius*, 443 F.3d 1247 (10th Cir. 2006), the Tenth Circuit affirmed the granting of a preliminary injunction against the Kansas Governor and various state officials from enforcing Kansas gaming laws on a tract of Wyandotte Nation's Indian lands. *Id.* at 1248. The Tenth Circuit explained that "[w]e have repeatedly stated that such an invasion of tribal sovereignty can constitute irreparable injury." *Id.* at 1255. The Tenth Circuit determined that any harm caused to the "State Defendants by granting the injunction was substantially outweighed by the harm that the [tribe] would suffer if the court had not granted the injunction," as "an order enjoining the State Defendants from exerting jurisdiction could very well adversely affect the State of Kansas's sovereignty, but in the context of entering a preliminary injunction, the Tribe is faced with more devasting losses than the State Defendants' temporary inability to enforce its state gaming laws." *Id.* at 1255-56. The same reasoning applies here where the State's enforcement of the New York Highway Law to Westwoods infringes on the Nation's tribal sovereignty, and such harm is not subject to easy valuation, and monetary damages are not available because of the State's sovereign immunity.

Second, Defendants' infringement on the Nation's tribal sovereign immunity further constitutes irreparable harm in the absence of a preliminary injunction. "[I]nfringement of tribal sovereign immunity may constitute irreparable harm by invading tribal self-government in a way that 'cannot be adequately compensated for in the form of monetary damages' and because the loss of tribal sovereignty may not be subject to remedy upon final determination on the merits." *United States v.*

Washington, 20 F. Supp. 3d 986, 1073 (W.D. Wash. 2013) (quoting *Prairie Band*, 253 F.3d at 1250-51). In *Cayuga Indian Nation*, a tribe sought "an injunction enjoining [a] state-court foreclosure proceeding" initiated by a county for the tribe's failure to pay property taxes. 890 F. Supp. 2d at 242. The court found that the tribe "demonstrated that the … foreclosure actions are barred by the Tribe's sovereign immunity from suit, and that it is therefore entitled to preliminary injunctive relief." *Id.* at 248.

One of the "core aspects of sovereignty that tribes possess" is their sovereign immunity, which the Supreme Court has regarded as "a necessary corollary to Indian sovereignty and self-governance." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014). "The baseline position … is tribal immunity." *Id.* at 790. "Tribal immunity 'is a matter of federal law and is not subject to diminution by the States." *Id.* at 789. This means that "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). The Supreme Court has "sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred," applying immunity "both on and off [a] reservation," and declining to distinguish "between governmental and commercial activities of a tribe." *Id.* at 754-55 (citation omitted).

The Nation enjoys tribal sovereign immunity from suit and the enforcement of the New York Highway Law even for activity that the State may regulate. As the U.S. Supreme Court has explained, "[t]o say substantive state laws apply to [certain] conduct … is not to say that a tribe no longer enjoys immunity from suit." *Kiowa*, 523 U.S. at 755. Put differently, "[t]here is a difference between the right to demand compliance with state laws and the means available to enforce them." *Id.* (citations omitted). Thus, in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991), the Supreme Court held that Oklahoma could require an Indian tribe to collect certain taxes, but that tribal sovereign immunity prohibited Oklahoma from suing the tribe to compel collection. *Id.* at 510-14. Oklahoma complained that this decision "impermissibly burden[ed] the

administration of state tax laws," and left it without any remedy to enforce its state law. *Id.* at 510, 514. Yet, the Supreme Court rejected those arguments. *Id.* The same logic applies here: even if Defendants could apply the New York Highway Law to restrict the Nation's activities at Westwoods (which they cannot in the first place), the Nation's sovereign immunity from suit still bars the enforcement of these laws against the Nation and the Nation's federally-protected Westwoods property.

Furthermore, the State "cannot circumvent tribal immunity by merely naming [tribal] officers or employees." *Chayoon v. Chao*, 355 F.3d 141, 143 (2d Cir. 2004). The Second Circuit's decision in *Gingras v. Think Finance, Inc.*, 922 F.3d 112 (2d Cir. 2019), does not hold otherwise. *Gingras* held that "under a theory analogous to *Ex parte Young*, tribal sovereign immunity does not bar state … law claims for prospective, injunctive relief against tribal officials in their official capacities for conduct occurring *off of the reservation*." *Id.* at 120 (emphasis added). The Second Circuit in *Gingras* was careful to limit its holding to suit brought in *federal court* and made no mention of tribal officials being amenable to suit in state court. *Id.* at 124. The court added that there is a "minimal intrusion on sovereignty" when enforcing state laws against tribal officials "if federal courts are available as forums." *Id.* at 122. This case, by contrast, concerns conduct and activities on the Nation's federally-protected restricted fee lands at Westwoods. Thus, the Second Circuit's decision in *Gingras*—which involved "conduct outside of Indian lands," 922 F.3d at 121—is inapplicable and cannot be relied on by the State to enforce the New York Highway Law against the Nation's tribal officials at Westwoods.

Third, the State's immediate threat of economic harm to the Nation and its tribal programs and services constitutes irreparable harm. *See Cow Creek Band of Umpqua Tribe of Indians v. U.S. Dep't of Interior*, No. 24-cv-03594 (APM), 2025 WL 548316, at *4 (D.D.C. Feb. 19, 2025) (stating that tribes may show irreparable harm where there are "immediate impacts on tribal programs and services will be certain and great" and noting such "financial harms cannot be treated merely as lost profits, as if the [tribes] were purely private enterprises"). "[T]ribal business operations are critical to the goals of

tribal self-sufficiency because such enterprises in some cases 'may be the only means by which a tribe can raise revenues.'" *Bay Mills*, 572 U.S. at 810 (Sotomayor, J. concurring) (citation omitted). "This is due in large part to the insuperable (and often state-imposed) barriers Tribes face in raising revenue through more traditional means." *Id.*

In *Sac and Fox Nation of Missouri v. LaFaver*, 905 F. Supp. 904 (D. Kan. 1995), the court granted a tribe's requested temporary restraining order challenging the imposition of a state's motor fuel tax on a tribe's gasoline sales on Indian lands. *Id.* at 908. The court found irreparable harm based on the fact that the "loss of revenue will result in decreased services and programs to tribal members and the loss of employment for specific Tribal members" and "such basic services as law enforcement and fire protection may be endangered by this loss of revenue." *Id.* at 907. Here, as set forth in detail in the Coverdale Affidavit, the Nation demonstrates irreparable harm because without an injunction, the Nation stands to suffer significant workforce reductions and the closure or reduction of essential government services. *See id.*; *Coverdale Aff.* ¶¶8-23. Indeed, the Nation stands to lose approximately thirty-four percent (34%) of its discretionary sovereign fund without an injunction. *See Bowen Aff.* ¶12. These losses more than meet the threshold for irreparable harm. *See LaFaver*, 905 F. Supp. at 907-08.

Fourth, "'loss of reputation, goodwill, and business opportunities' can constitute irreparable harm." *M.V. Music v. V.P. Records Outlet, Inc*, 653 F. Supp. 3d 31, 39 (E.D.N.Y. 2023) (quoting *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004)). "Goodwill is defined as the 'expectancy of continued patronage[.]'" *Id.* (citation omitted). Goodwill "typically includes not only the likelihood that customers will return to the old place of business, but the competitive advantage of an established business." *Nat'l Elevator Cab & Door Corp. v. H & B, Inc.*, No. 07-CV-1562 (ERK) (RML), 2008 WL 207843, at *5 (E.D.N.Y. Jan. 24, 2008), *aff'd*, 282 F. App'x 885 (2d Cir. 2008); *Shenzhen Miracle Laptop Bags Co., Ltd. v. Castillo*, No. Nat'l Elevator Cab & Door Corp. v. H & B, Inc., No. 07-CV-1562 (ERK) (RML), 2008 WL 207843, at *5 (E.D.N.Y. Jan. 24, 2008)Nat'l Elevator Cab & Door Corp. v. H & B,

Inc., No. 07-CV-1562 (ERK) (RML), 2008 WL 207843, at *5 (E.D.N.Y. Jan. 24, 2008)22-cv-7734 (HG), 2023 WL 1070464, at *3 (E.D.N.Y. Jan. 27, 2023) ("It is well recognized that the inability of a party to supply its products to customers as a result of a dispute will often result in a loss of goodwill sufficient to establish irreparable harm."). As set forth in the Clark Affidavit, the Nation demonstrates irreparable harm because it stands to lose goodwill in the advertising industry that could threaten its future economic development and ultimately destroy this project without the need to actually bulldoze the Monument Signs. *See id.*; *Clark Aff.* ¶¶ 6, 100.

III. The Equities and Public Interest Weigh Heavily in the Nation's Favor.

The equities weigh heavily toward the Nation here because Defendants lack any cognizable legal interest in regulating the Nation's federally-protected restricted fee lands at Westwoods—something they have no entitlement to do in the first place. *See Ute Indian Tribe*, 790 F.3d at 1007 (rejecting argument by state and county that "an injunction would impede their ability to ensure safety on public rights-of-way" as a "temporary injunction would simply prohibit the State and County from prosecuting [tribal members] for offenses in Indian country—something they have no legal entitlement to do in the first place").

Here, there is a substantial public interest in ensuring that Defendants abide by federal law governing Indian lands. "[T]here is generally no public interest in the perpetuation of unlawful agency action …. To the contrary, there is substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838 F.2d 1, 12 (D.C. Cir. 2016). A preliminary injunction would also "promote[] the paramount federal policy that Indians develop independent sources of income and strong self-government." *Seneca-Cayuga Tribe v. Oklahoma ex rel. Thompson*, 874 F.2d 709, 716 (10th Cir. 1989).

IV. The *Younger* Abstention Doctrine Does Not Apply to State Proceedings Infringing on Tribal Sovereignty.

Even before the U.S. Supreme Court narrowed application of the doctrine in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013), this Circuit had already carved out an exception for disputes involving questions of tribal sovereignty. This dispute must be resolved in a federal forum by this Court because the State has asserted jurisdiction over the Nation's restricted fee lands that enjoy federal protection. Abstention would resolve the sovereignty question in favor of the State before the Nation even has an opportunity to make its arguments, a result this Circuit disfavors.

Moreover, the Nation itself is not even a party in the pending state court litigation because the State could not sue the Nation in state court. "*Younger* abstention 'does not apply when a plaintiff's federal claims cannot be presented in pending state court proceedings.'" *Donohue v. Mangano*, 886 F. Supp. 2d 126, 141 (E.D.N.Y. 2012) (citation omitted). Not only are the Nation's trustees the only named defendants in the litigation brought by the State in pending before Supreme Court of the State of New York, the Nation's claims asserted in this case cannot be presented in the state court. After all, individual Indians lack standing to bring Non-Intercourse Act claims. *See Golden Hill*, 39 F.3d at 54 n.1("Individual Indians do not fall within the zone of interests to be protected by the Nonintercourse Act."). Because the *Younger* abstention doctrine does not apply, the Court should issue a preliminary injunction to protect its ability to resolve this important dispute over the Nation's tribal sovereignty.

The *Younger* abstention doctrine instructs federal courts to refrain from exercising jurisdiction over certain matters concerning ongoing proceedings in state court. *See Younger v. Harris*, 401 U.S. 37, 44 (1971). The Second Circuit has identified two exceptions to *Younger* abstention: (1) bad faith, i.e., "cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction"; and (2) extraordinary circumstances, i.e., where "'extraordinary circumstances' render the state court incapable of fairly and fully adjudicating the federal issues before it, . . . creating an extraordinarily pressing need for immediate federal equitable relief." *Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198-201 (2d Cir. 2002) (citations omitted).

Younger abstention is one exception to the general rule that "a federal court's obligation to hear and decide a case is virtually unflagging." *Sprint Commc'ns.*, 571 U.S. at 77 (internal quotation marks omitted). It "is grounded in interrelated principles of comity and federalism." *Spargo v. N.Y. State Comm'n on Jud. Conduct*, 351 F.3d 65, 74 (2d Cir. 2003). Abstention "is not a jurisdictional bar based on Article III requirements, but instead a prudential limitation on the court's exercise of jurisdiction." *Id.* As a result, a district court's discretion "must be exercised within the narrow and specific limits prescribed by the particular abstention doctrine involved." *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 99 (2d Cir. 2012) (citation omitted).

Both the Supreme Court and the Second Circuit have narrowed application of *Younger* in recent years. *See Gristina v. Merchan*, 131 F.4th 82, 86 (2d Cir. 2025). Although a "federal court's obligation to hear and decide a case is virtually unflagging," *Sprint Commc'ns, Inc.*, 571 U.S. at 77 (internal quotation marks and citation omitted), there are a small number of cases "in which the withholding of authorized equitable relief because of undue interference with state proceedings is 'the normal thing to do,'" *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 359 (1989) (quoting *Younger*, 401 U.S. at 45). Abstention is only warranted under certain "exceptional" circumstances, namely, "(1) where there is a pending state criminal prosecution; (2) where there is a pending civil enforcement proceeding; or (3) where there is a pending civil proceeding uniquely in furtherance of the state courts' ability to perform their judicial functions." *Gristina*, 131 F.4th at 86-87 (internal quotation marks and citations omitted). In determining whether *Younger* applies to third-party claims, courts also consider certain non-dispositive factors, including whether the state proceeding "implicates an important state interest" and whether "the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of his or her federal constitutional claims." *Falco v. Justices of the Matrimonial Parts of Sup. Ct. of Suffolk Cty.*, 805 F.3d 425, 427 (2d Cir. 2015) (internal quotation marks and citation omitted). Despite the fact that *Younger* may apply in these circumstances, the Supreme Court has emphasized

that "abstention from the exercise of federal jurisdiction is the exception, not the rule." *Sprint Commc'ns, Inc.*, 571 U.S. at 593 (internal quotation marks and citation omitted).

In general, federal courts should not abstain from exercising jurisdiction "over the claim of a genuine stranger to an ongoing state proceeding even though a federal decision clearly could influence the state proceeding . . . [s]o long as the stranger has its own distinct claim to pursue . . . ." *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1230 (10th Cir. 2004) (internal citations omitted). This Circuit has identified two other distinct exceptions to *Younger*. Courts find exceptions to *Younger* abstention upon a "showing of bad faith, harassment, or . . . other unusual circumstance[.]" *Younger*, 401 U.S. at 54. "To invoke this exception, the federal plaintiff must show that the state proceeding was initiated with and is animated by retaliatory, harassing, or other illegitimate motive." *Diamond "D"*, 282 F.3d at 199. For the other exception, extraordinary circumstances, to apply, a court must conclude: "(1) that there [is] no state remedy available to meaningfully, timely, and adequately remedy the alleged constitutional violation; and (2) that . . . the litigant will suffer 'great and immediate' harm if the federal court does not intervene." *Id.* at 201 (citing *Trainor v. Hernandez*, 431 U.S. 434, 441-42, & n.7 (1977)).[2]

Most importantly in this Circuit, controversies about state power over Indian tribes, their territory, or their affairs are uniquely federal concerns under the Constitution, deserving heightened scrutiny by federal courts. In *Bowen v. Doyle*, the Second Circuit upheld a determination that *Younger* did not apply and no administrative exhaustion requirement existed for the claims in state court because the state had no cognizable interest in its interference with tribal self-government:

> [W]e see no reason to extend the rule dramatically by requiring a federal court to stay its hand until the conclusion of state court proceedings that happen to involve tribal

[2] Other courts have resisted application of *Younger* for important constitutional questions bearing on the continuation of the state proceeding itself. For instance, in *Lynn* the Fourth Circuit asserted jurisdiction and held that a North Carolina purported tax statute was a criminal penalty, without discussing *Younger* or abstaining on its grounds. *See, e.g., Lynn v. West*, 134 F.3d 582, 595 (4th Cir. 1998) ("federal courts have jurisdiction to examine a tax that is in reality a criminal penalty"). In addition, both before and after *Sprint*, courts have consistently recognized that plausible double jeopardy claims can constitute an exception to Younger's application. *See, e.g., Foster v. Murphy*, 686 F. Supp. 471, 474 (S.D.N.Y. 1988) ("claims under the double jeopardy clause fit within the exception to the Younger abstention doctrine") (quoting *Drayton v. Hayes*, 589 F.2d 117, 121 n.7 (2d Cir. 1979)).

> issues. State courts do not play a "vital role in tribal self-government," [*Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987)] (emphasis added); they play no role at all. Similarly, a rule requiring the exhaustion of state court proceedings relating to tribal issues would not promote a sovereign tribe's "autonomy and dignity." [*Basil Cook Enters., Inc. v. St. Regis Mohawk Tribe*, 117 F.3d 61, 65 (2d Cir. 1997)].

Bowen, 230 F.3d at 530. When the district court decided *Bowen*, it declined to abstain under *Younger* because the case raised issues of tribal self-government and did not implicate a state interest of New York State. *Id.* at 96-97. Indeed, abstention is only warranted "where such inaction is necessary to avoid undue interference with states' conduct of their own affairs." *Seneca-Cayuga* 874 F.2d at 711. "Abstention is an 'extraordinary and narrow exception' to a district court's role as adjudicator of a ripe controversy." *Fort Belknap Indian Cmty. v. Mazurek,* 43 F.3d 428, 431 (9th Cir. 1994) (citations omitted); *Tohono O'Odham Nation,* 837 F. Supp. at 1028-29. The court in *Bowen* specifically reasoned as follows:

> Here, abstention is inappropriate as the critical issue—whether the State Court has authority to enter orders directing how an Indian tribe may govern itself—is a federal question, and New York has no interest in the subject matter of the underlying controversy. Thus, federal jurisdiction is not precluded by either the Anti-Injunction Act, 28 U.S.C. § 2283, or the *Younger* abstention doctrine, or the *Rooker-Feldman* doctrine, or the Supreme Court's decision in *United States ex rel. Kennedy v. Tyler,* 269 U.S. 13, 70 L. Ed. 138, 46 S. Ct. 1 (1925).

Id. at 130. *Bowen* comports with authority in the Ninth and Tenth Circuits specifically refusing to apply *Younger* to cases of conflicting jurisdiction claims between states and Indian tribes, because the Ninth and Tenth Circuits have expressly rejected the application of the *Younger* abstention doctrine and enjoined pending state court proceedings even where the state not only demonstrated a significant interest in the subject matter of the state suit, but also had a colorable claim of jurisdiction. *See Fort Belknap,* 43 F.3d at 431-32; *Sycuan Band of Mission Indians v. Roache,* 38 F.3d 402, 408 (9th Cir. 1994); *Seneca-Cayuga,* 874 F.2d at 709.[3] In *Fort Belknap*, the court enjoined state criminal prosecution of

[3] These decisions also flow out of a long-standing body of case law demonstrating the power of federal courts to enjoin state proceedings involving Indian law questions or infringing on Indian sovereignty. The United States has had a trust obligation to protect tribal interests from state encroachment since the founding of the republic. *See, e.g., Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 595 (1831); 25 U.S.C. § 3601(2) (congressional trust obligation to protect tribal sovereignty); *HRI Inc. v. E.P.A.*, 198 F.3d 1224, 1245-46 (10th Cir. 2000). That trust responsibility is manifested in any number of injunctive

reservation Indians for failure to secure state liquor licenses because the "threshold question" of whether the state had jurisdiction to prosecute was "paramount and federal," making *Younger* abstention inappropriate. *Fort Belknap,* 43 F.3d at 431-32. Similarly, in *Seneca-Cayuga,* the Tenth Circuit upheld a federal court injunction against state court proceedings concerning the legality of a tribe's high-stakes bingo games even though the state had "undoubtedly legitimate" interests in "preventing the infiltration of organized crime, and protecting the State's economy and tax base." 874 F.2d at 711-12. Nevertheless, the court refused to apply *Younger* abstention because "the threshold question whether the State has authority to regulate Indian bingo is a matter of federal law" requiring consideration of whether state regulatory authority has been preempted or would infringe on tribal self-government. *Id.* at 714. In *Bowen*, the court reasoned as follows:

> [T]he threshold question at issue here is whether federal law bars the State Court from exercising jurisdiction over the controversy. If so, then there is no authority for the State Court to proceed in the case. As established by the Ninth and Tenth Circuits in *Fort Belknap* and *Seneca-Cayuga,* this is a question of federal Indian law which must be resolved in the federal courts first. **A decision on this issue does not touch or offend the State's contempt process because the State's interest in enforcing the orders of its courts is predicated on its having jurisdiction.**

880 F. Supp. at 132 n.44 (emphasis added). Here, just as in *Bowen*, *Younger* does not apply because the State's interest in enforcing its orders in the state highway law enforcement proceeding "is predicated on its having jurisdiction" (which it does not). *See id.* Moreover, just as in S*eneca-Cayuga,* where the Tenth Circuit upheld a federal court injunction against state court proceedings concerning the legality of a tribe's high-stakes bingo games even though the state had "undoubtedly legitimate" interests

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actions brought by the United States to protect the tribes' rights in the face of state authority. *See, e.g., United States v. Bd. of Comm'rs of Osage Cty.*, 251 U.S. 128, 133 (1919) (enjoining state enforcement of taxes against Indians; emphasizing that "the existence of power in the United States to sue [pursuant to its trust obligation to Indians] … disposes of the proposition that because of remedies afforded [the Indians] under the state law the authority of a court of equity could not be invoked by the United States"); *United States v. Cty. of Humbolt*, 615 F.2d 1260 (9th Cir. 1980) (action by United States to enjoin county from enforcing zoning and building codes against tribe); *Alonzo v. United States*, 249 F.2d 189 (10th Cir. 1957) (enjoining state court proceeding against Indian tribe and its officers concerning rights to Indian property); *United States v. Michigan*, 508 F. Supp. 480 (W.D. Mich. 1980) (action to prevent a state court from holding a tribal member in contempt for violating state fishing regulations); *United States v. Washington*, 459 F. Supp. 1020 (W.D. Wash. 1978) (action to stop state interference in tribal fishing rights), *aff'd*, 645 F.2d 749 (9th Cir. 1981).

because "the threshold question whether the State has authority to regulate Indian bingo is a matter of federal law," requiring consideration of whether state regulatory authority has been preempted or would infringe on tribal self-government. *Seneca-Cayuga*, 874 F.2d at 711-14. Here, the Court should issue an injunction because the state court proceeding requires consideration of whether the State's Highway Law is preempted on restricted fee lands at Westwoods. Finally, as in *Fort Belknap*, where the court enjoined state criminal prosecution of Indians for failure to secure state liquor licenses because the "threshold question" of whether the state had jurisdiction to prosecute was "paramount and federal," here application of *Younger* abstention is equally inappropriate because the question of the State's jurisdiction over Westwoods is "paramount and federal." *Fort Belknap,* 43 F.3d at 431-32.

Finally, the Nation also demonstrates an exception under *Younger* because the state instituted its proceeding in (1) bad faith, "without hope of obtaining a valid conviction" and under (2) extraordinary circumstances "render[ing] the state court incapable of fairly and fully adjudicating the federal issues before it, . . . creating an extraordinarily pressing need for immediate federal equitable relief." *Diamond "D"*, 282 F.3d at 201. The State demonstrates its bad faith by proceeding without jurisdiction on a purported easement for which it failed to obtain Congressional approval. It also demonstrates that bad faith by claiming the Monument Signs upon which it advertised as recently as 2025, placed in the area the state itself designated for such purpose, are somehow violative of its Highway Law. The state court also remains incapable of fairly adjudicating these issues given the local political pressures and significant political campaign mounted against the Nation and Westwoods in the Town of Southampton. The Nation has demonstrated the "extraordinarily pressing need for immediate federal equitable relief" justifying an exception from *Younger* under these circumstances. *Diamond "D"*, 282 F.3d at 201. Therefore, the Court should issue the requested injunction.

V. The Anti-Injunction Act Does Not Bar a Preliminary Injunction Because an Indian Claims Enjoy an Exception for Claims Brought Under 28 U.S.C. § 1362.

The Nation meets at least two exceptions to the Anti-Injunction Act. That statute provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The Act is designed to prevent "needless friction between state and federal courts." *Mitchum v. Foster*, 407 U.S. 225, 233 (1972) (quoting *Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1939)).

The Supreme Court has made clear that the Anti-Injunction Act does not prohibit injunctions that fall within one of three exceptions. *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977). The "in aid of" exception to the Act has been read to allow a federal court to protect its prior jurisdiction over res by enjoining a state court proceeding that interferes with the property. *Cayuga Indian Nation of N.Y. v. Fox*, 544 F. Supp. 524, 551 (N.D.N.Y. 1982). The Supreme Court has recognized some overlap between the "in aid of" and the "protect and effectuate" exception, and has construed the latter to mean that a state court may be prevented "from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970).

Here, the Nation brings claims related to its restricted fee lands at Westwoods. These claims also involve the Nation's economic development project, the Monument Signs. If the New York state court continues imposing escalating sanctions or ultimately orders officials of the State to invade the Westwoods to tear down the Monument Signs, the State will have "seriously impair[ed] the federal court's flexibility and authority to decide that case." *Atl. Coast Line R.R. Co.,* 398 U.S. at 295.

The Anti-Injunction Act also does not apply to Indian claims asserted under 28 U.S.C. § 1362, which provides federal jurisdiction for actions brought by an Indian nation arising under federal law. The primary purpose of 28 U.S.C. § 1362 is to remove the jurisdictional amount in controversy barrier for Indian tribes, and to give tribes the right to sue on their own behalf in any controversy involving

tribal property or matters of tribal sovereignty where United States declines to do so on tribe's behalf as trustee. *Hous. Auth. of Seattle v. Wash. Dep't of Revenue*, 629 F.2d 1307, 1313-14 (9th Cir. 1980). "Before § 1362 existed, tribes had to rely on the United States to sue on their behalf…. Otherwise, they were relegated to state court." *Gila River Cmty. v. Schoubroek*, 145 F.4th 1058, 1076 (9th Cir. 2025).

28 U.S.C. § 1362 confers original federal jurisdiction for suits brought to protect Indian lands recognized by the United States. *See Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 465 (2d Cir. 2013) ("Congress bestowed on the federal courts original jurisdiction over 'all' federal claims brought by tribes.") (citing 28 U.S.C. § 1362). "The 'common thread running through' cases properly brought under § 1362 'is that they all involve[] possessory rights of the tribes to tribal lands.'" *Gila River Cmty.*, 145 F.4th at 1076 (citation omitted); *Fort Mojave Tribe v. Lafollette*, 478 F.2d 1016, 1018 (9th Cir. 1973) ("Congress intended by § 1362 to authorize an Indian tribe to bring suit in federal court to protect its federally derived property rights"); *Oneida Indian Nation*, 414 U.S. at 666-67 ("Given the nature and source of the possessory rights of Indian tribes …. it is plain that the complaint asserted a controversy arising under the Constitution, laws, or treaties of the United States within the meaning of both § 1331 and § 1362.").

The Supreme Court has held that the Anti-Injunction Act does not apply where the United States is the party seeking the injunction. *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 227-29 (1957). In addition, the United States, as trustee for Indian Nations, may initiate lawsuits to protect their interests. *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 473 (1976). The Supreme Court has long held that the United States has standing in its own right to bring an action, as trustee for tribal interests to seeking relief regarding unlawful conveyances of Indian lands, independent of the rights or participation of the Indian tribe or tribal members.

In *Heckman v. United States*, 224 U.S. 413 (1912), the United States brought suit to invalidate certain conveyances of allotted lands by members of the Cherokee Nation, based on a violation of

federal restrictions on alienation. *Id.* at 415, 428. The Court held that the United States had standing, irrespective of the participation of the Indian parties, to enforce federal restraints on the alienation of Indian lands. *Id.* at 434. In *Bowling v. United States*, 233 U.S. 528 (1914), citing *Heckman*, the Supreme Court stated that "it is no longer open to question that the United States has the capacity to sue for the purpose of setting aside conveyances of land allotted to Indians under its care, where restrictions upon alienation have been transgressed." *Id.* at 534. The Court explained that "as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the government rights of the United States arising from its obligations to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the government is a stranger can affect its interest." *Id.* at 535.[4]

Courts in the Second Circuit have determined that the Anti-Injunction Act does not apply to actions brought by Indian tribes pursuant to 28 U.S.C. § 1362 that the United States could have otherwise brought. *See Bowen*, 880 F. Supp. at 130 n.39. Thus, courts have permitted Indian tribes to bring federal court actions to enjoin state court proceedings under this exception to the Anti-Injunction Act where the threshold issue is whether, as a matter of federal law, the state court has subject matter jurisdiction to proceed: "Two principles underlie these courts' holdings: the well-established rules protecting Indian tribes' interests in their sovereignty and property, and the primacy of federal authority in Indian affairs." *Id.* at 130.

In *Cayuga Indian Nation of N.Y. by Patterson v. Cuomo*, 565 F. Supp. 1297, 1321 (N.D.N.Y. 1983), the court explained that "it is also established that the purpose and effect of 28 U.S.C. § 1362 was 'to open the federal courts to the kinds of claims that could have been brought by the United States as trustee, but for whatever reason were not so brought.'" *Id.* at 1321 (quoting *Moe*, 425 U.S. at 472).

[4] *See also United States v. Candelaria*, 271 U.S. 432, 443-44 (1926) (stating that the United States "has an interest in maintain and enforcing" restrictions on alienation which cannot be affected by a prior judgment where the United States has not appeared); *Canadian St. Regis Band of Mohawk Indians v. New York*, 146 F. Supp. 2d 170, 194 (N.D.N.Y. 2001) ("[T]he United States may properly assert Nonintercourse Act claims challenging the various conveyances of the subject islands by the State of New York.").

"The measure was meant to assure the tribes 'of the same judicial determination whether the action is brought in their behalf by the Government or by their own attorneys.'" *Id.* (citation omitted). The court added that "[t]he United States could have brought this suit, but has, according to the parties, declined to do so. The Cayugas are therefore to be afforded an opportunity to do so on their own behalf. In short, the right of action owned by the United States to enforce the Nonintercourse Act may, due to 28 U.S.C. § 1362, be invoked by the affected Indian tribe. The Cayugas are exercising that derivate right of action in bringing this lawsuit." *Id.*

Likewise, in *Cayuga Indian Nation of New York v. Fox*, 544 F. Supp. 542 (N.D.N.Y. 1982), the court determined that a tribe could obtain an injunction to enjoin state court proceedings when the injunction could have been brought by the United States. *Id.* at 551. The court emphasized that 28 U.S.C. § 1362 "permits the Cayuga Indian Nation to seek the injunctive relief that the United States could have sought, and therefore the Act is equally inapplicable where, as here, the Nation litigates under [28 U.S.C. § 1362] in its own right," and as a result, this "provides an alternative ground for the conclusion that the requested injunction is not barred by the Anti-Injunction Act." *Id.* at 551 n.5.

In this case, 28 U.S.C. § 1362 permits the Nation to seek the injunctive relief that the United States could have sought, and therefore the Anti-Injunction Act is equally inapplicable where, as here, the Nation litigates under § 1362 in its own right. Therefore, the Anti-Injunction Act does not apply, and the Court may properly issue an injunction to protect its jurisdiction over the Nation's claims.

CONCLUSION

For the foregoing reasons, the Court should grant the Nation's requested preliminary injunction restraining the State from imposing its Highway Law against the Nation and the Nation's federally-protected restricted fee lands at Westwoods. The Court should also stay the proceedings in the Supreme Court of the State of New York in the litigation seeking judicial enforcement against the Nation's Trustees relating to the operation of Monument Signs at Westwoods.

Respectfully Submitted,

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Brooklyn, New York

BY: /s/ John F. Byrnes, Esq.
BYRNES, O'HERN & HEUGLE LLC
JOHN F. BYRNES
195 East Bergen Place
Red Bank, New Jersey 07701
Phone: (732) 219-7711

DRAGONFLY LAW GROUP, P.C.
JUDITH A. SHAPIRO
7059 Eastern Ave, NW Suite 200
Washington DC 20012
Telephone: (202) 257-6436
Email: jshapiro@dflylaw.com

THOMAS J. NITSCHKE
731 St. Joseph St., Suite 230
Rapid City, SD 57701
Telephone: (605) 646-0189
Email: tomn@dflylaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 14, 2025, a true and exact copy of the foregoing document was served on Counsel at the emailed addresses provided below:

Office of the New York State Attorney General
Christopher Gatto, Esq.
State Counsel | Real Property Bureau
300 Motor Parkway, Suite 205
Hauppauge, New York 11788-5127
Email: christopher.gatto@ag.ny.gov

/s/ John F. Byrnes, Esq.