No. 25-4618

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIAN HOLL, et al.,
Plaintiffs-Appellants,

v.

SHARON AVERY, in her official capacity as Acting Chairwoman of the National Indian Gaming Commission,

and

NATIVE VILLAGE OF EKLUTNA,
Defendants-Appellees.

On appeal from the U.S. District Court
for the District of Alaska
Case No. 3:24-cv-00273-JLR
The Honorable James L. Robart

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JURISDICTIONAL STATEMENT

Plaintiffs-Appellants' complaint alleged claims under the Administrative Procedure Act, 5 U.S.C. § 706, and asserted jurisdiction under 28 U.S.C. § 1331. ER-106. The District Court dismissed the case for lack of jurisdiction under Federal Rules of Civil Procedure 12(b)(1) and Rule 19, and entered judgment on June 27, 2025. Plaintiffs-Appellants' motion for reconsideration was denied by the District Court on July 7, 2025. Plaintiffs-Appellants timely filed a notice of appeal on July 22, 2025, asserting appellate jurisdiction under 28 U.S.C. § 1291. For the reasons discussed below the Court lacks jurisdiction over the federally recognized Native Village of Eklutna.

STATEMENT OF ISSUES

1. Did the District Court correctly dismiss the claims against the Native Village of Eklutna under Civil Rule 12(b)(1) because the Tribe is a federally recognized tribe possessing sovereign immunity?

2. Did the District Court properly exercise its discretion to dismiss the case in its entirety after determining that the Tribe is a required party that cannot be joined and that the Civil Rule 19(b) factors require dismissal?

STATUTES AND REGULATIONS

The pertinent statutes and rules are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

Appellee Native Village of Eklutna ("the Tribe") is a federally recognized Indian tribe of the Dena'ina people who have resided in the upper Cook Inlet region of Alaska since time immemorial. *See Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 89 Fed. Reg. 99899 (Dec. 11, 2024); *see also, e.g.*, *Native Vill. of Eklutna v. U.S. Dep't of Interior*, No. 19-cv-2388, 2021 WL 4306110, at *1 (D.D.C. Sept. 22, 2021) ("Eklutna is a federally recognized Indian tribe of the Dena'ina people whose traditional homeland is the upper Cook Inlet region of Alaska."). The Tribe is a named defendant in this matter and appeared specially for the limited purpose of seeking dismissal pursuant to Civil Rules 12(b)(1), 12(b)(7) and 19. ER-71.[1]

Plaintiffs-Appellants Brian Holl *et al*. (collectively, "Holl") assert that the Tribe's small, Class II gaming facility—an electronic bingo parlor—has the potential to cause traffic problems for neighboring landowners. The remedy, Holl asserts, is to "void" the Tribe's federal recognition and by that means shut down the gaming facility. To that end, Holl requests judicial declarations that (1) "neither Congress

[1] As with the Shoalwater Bay Indian Tribe in *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024), *cert. denied sub nom. Runitonetime LLC v. United States*, No. 24-1161, 2025 WL 2823742 (Oct. 6, 2025) ("*Maverick*"), by appearing in this action "for the limited purpose of moving to dismiss under Rules 12(b)(7) and 19, [the Native Village of Eklutna] does not waive, and reserves in full, its sovereign immunity." *Id.* at 978.

nor the [Department] of the Interior" consider the Tribe to be a "federally recognized tribe … possess[ing] powers of self-government"; (2) that the Tribe is "not an 'Indian Tribe'" as defined in in the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721; (3) that the Ondola Native Allotment, on which the Tribe's gaming facility operates, is not "'Indian country' and is not 'Indian lands'" as those terms are defined in 18 U.S.C. § 1151(c) and IGRA, respectively; and (4) that the National Indian Gaming Commission's ("NIGC") approval of the Tribe's Gaming Ordinance "was *void ab initio* and . . . taken in excess of [the NIGC's] authority." ER-138–39.

Holl's central claim is that the Department of the Interior's inclusion of the Tribe and all other Alaska tribes on its 1993 List of "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs" was "*Ultra Vires*." Opening Br. 22, 25-26, Dkt. No. 12.1 (citing 58 Fed. Reg. 54364 (Oct. 21, 1993)). Essentially, Holl requests that the Tribe's longstanding federal recognition be declared "void" or rescinded.

If Holl's requested relief is granted, and the Tribe's federal recognition "voided," the injury to the Tribe and to the other 228 Alaska tribes on the Department's List "would be enormous." *Maverick*, 123 F.4th at 980 (quoting *Am. Greyhound Racing Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002)).

A. The Gaming Operation.

The Tribe's Class II gaming facility is located on an Alaska Native allotment owned by tribal members within the Tribe's traditional territory ("the Ondola Allotment").[2] Class II gaming includes bingo and similar games, including electronic bingo. 25 U.S.C. § 2703(7)(A); *see also Maverick*, 123 F.4th at 966. A tribe may authorize gaming on "Indian lands," which includes "any lands . . . held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4)(B). The Tribe opened its gaming facility following the NIGC's July 18, 2024 approval of the Tribe's Gaming Ordinance under IGRA, 25 U.S.C. §§ 2701-2721. ER-95–104. The NIGC's approval included an Indian Land Opinion finding that the Ondola Allotment qualified for gaming. ER-96–104.

B. Appellants Seek to Overturn Decades of Federal Recognition of Alaska's Tribes.

This Administrative Procedure Act ("APA") matter was brought by Brian Holl

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[2] IGRA establishes three classes of Indian gaming. The statute provides "[a]n Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction . . . ." 25 U.S.C. § 2710(b)(1). Class II gaming is within the exclusive jurisdiction of the relevant tribe, and must be authorized by the tribe pursuant to a tribal gaming ordinance approved by the NIGC and be located within a State that permits such gaming for any purpose by any person. 25 U.S.C. § 2710(a)(2), (b)(1). The State of Alaska permits bingo and other games. *See* Alaska Stat. §§ 05.15.010-05.15.095; Alaska Admin. Code tit. 15, §§ 160.010-160.995.

and several individuals who claim that possible increased traffic related to the Tribe's gaming facility will affect their interests. ER-107–10. Holl does not explain why the anticipated traffic problems (should they ever materialize) cannot be solved through the State of Alaska's Department of Transportation and Public Facilities' Traffic Safety Office or the Municipality of Anchorage's Traffic Department. *See* State of Alaska, Dep't of Trans. & Pub. Fac., Traffic and Safety Resources; https://dot.alaska.gov/stwddes/dcstraffic/resources.shtml (last visited Jan. 8, 2026); Muni. of Anchorage, Traffic Dept., https://www.muni.org/Departments/traffic/Pages/default.aspx (last visited Jan. 8, 2026).

Instead, using a sledgehammer to swat a gnat, Holl seeks reversal the Department of the Interior's 1993 decision to federally recognize the Tribe and 228 other Alaska tribes.[3] Holl requests this relief purportedly to reverse the NIGC

[3] The Federally Recognized Indian Tribe List Act, Pub. L. No. 103-454, § 104, 108 Stat. 4791, 4792 (1994) (codified at 25 U.S.C. § 5131) (the "List Act"), codified the Department's practice of periodically publishing a list of all federally recognized tribes, and directed the Department to publish such a list annually. As Holl admits, the Eklutna Native Village has been on every iteration of the Department's List since at least 1982, ER-116–17; *see, e.g.*, 47 Fed. Reg. 53130, 53134, 1982 WL 153897 (Nov. 24, 1982); 53 Fed. Reg. 52829, 52834, 1988 WL 266426 (Dec. 29, 1988); 58 Fed. Reg. 54364, 54369 1993 WL 420646 (Oct. 21, 1993), and on every List since then continuing through the present, *e.g.*, 89 Fed. Reg. 99899, 99902, 2024 WL 5055931 (Dec. 11, 2024). The Tribe disputes Holl's characterizations of events that led to creation of the 1993 List. The Department's 1993 List itself includes a more complete and accurate history than Holl's version. *See* 58 Fed. Reg. at 54364-66.

approval of the Tribe's Gaming Ordinance and the accompanying Indian Land Opinion concerning the Ondola Allotment, which would compel the Tribe's facility to close. ER-105–06 ¶¶ 1-3 (citing 5 U.S.C. §§ 551-559). But the alleged traffic problems and recent agency approvals are red herrings. Holl targets the 1993 List, which Holl identifies as the Department's "Final Agency Action," arguing that the List was "*Ultra Vires*." Opening Br. 25-26.[4] Simply put, more than 30 years after publication of the 1993 List, Holl seeks to have this Court "void" the 1993 List and rescind the Tribe's federal recognition.

Claims such as Holl's—that a federally recognized tribe is not really a "tribe"—are raised frequently in tribal gaming cases. The specific factual situations and legal theories in each case have varied. Nonetheless, as this Court has observed, "[n]o tribunal has accepted this argument. But that has not deterred litigants . . . from pressing similar claims in myriad actions before administrative agencies, state courts, and federal courts around the country since the early 1990s." *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 988-89 (9th Cir. 2020).

This Court expressed "hope" that its opinion in *Jamul Action Committee* "will finally put an end to these claims." *Id*. at 989. Unfortunately, as this matter shows, it has not. Holl claims that the Tribe is not a tribe at all, but rather "an unincorporated

[4] Holl does not challenge Department's Lists earlier than 1993, focusing only the 1993 "final agency action." Opening Br. 25-26.

association that was created in 1988" and that the Tribe was not "lawfully designated as a 'federally recognized tribe'" by the "*Ultra Vires*" 1993 List. Opening Br. 4; ER-111. The magnitude of these arguments is breathtaking. If accepted, these arguments would call into question the status of *all* 229 federally-recognized Alaska tribes on the 1993 List and all subsequent Lists that have been published annually by the Department. *See* 1993 List, 58 Fed. Reg. 54364, 1993 WL 420646; *see generally*, Bureau of Indian Affs., Alaska Region Overview, https://www.bia.gov/regional-office/alaska-region (last visited Jan. 8, 2026). Revoking decades of federally-recognized tribal governmental status would entail, among many other severe impacts, the loss of sovereignty and loss of eligibility for federal Indian programs for all 229 tribal governments in the State of Alaska.[5]

This dispute is not actually about traffic in a neighborhood that already sees commercial traffic to a building materials supplier, a local airport, and two gun ranges.[6] In this regard, Holl is no different than the many other litigants "pressing

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[5] In addition to the problems noted by the Tribe's motion, Holl's proposed relief fails to state a claim. Fed. R. Civ. P. 12(b)(6); *see* List Act, Pub. L. No. 103-454 at § 103(4), 108 Stat. at 4791-92 (once federally recognized, a tribe "may not be terminated except by an Act of Congress").

[6] Holl's counsel has engaged in a long-standing and uniformly rejected effort to prove that tribes "do not exist" in Alaska. *See, e.g.*, Amicus Br. for the Legis. Council of Alaska Legis. at 23-26, *Runyon v. Ass'n of Vill. Council Presidents*, 84 P.3d 437 (Alaska 2004) (Nos. S-10772, S-10838), 2003 WL 24048558, at *23-26 (arguing that "more than a century ago Congress decided that it would not create 'federally recognized tribes' in Alaska whose governing bodies would possess

similar claims in myriad actions before administrative agencies, state courts, and federal courts around the country since the early 1990s," none of whom have been successful. *Jamul Action Comm.*, 974 F.3d at 988-89.

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governmental authority and sovereign immunity"); *Runyon ex rel. B.R. v. Ass'n of Vill. Council Presidents*, 84 P.3d 437, 439 n.3 (Alaska 2004) ("declin[ing] the invitation[] of . . . amicus Legislative Council [represented by Holl's counsel] to revisit" *John v. Baker*, 982 P.3d 738 (Alaska 1999), which confirmed that federally recognized Alaska tribes have sovereign immunity), *overruled on other grounds by Ito v. Copper River Native Ass'n*, 547 P.3d 1003 (Alaska 2024); Br. of Edward Parks & Donielle Taylor as Amici Curiae in Supp. of Pet'rs at 18 n.9, *Hogan v. Kaltag Tribal Council*, 562 U.S. 827, 2010 WL 1049413, at *18 n.9 (in petition for certiorari seeking review of this Court's decision, Holl's counsel again unsuccessfully arguing that *John v. Baker* was wrongly decided). In *McCrary v. Ivanof Bay Village*, Holl's counsel argued that Interior lacked the authority to designate federally recognized tribes in Alaska, and—exactly as Holl argues here—that Assistant Secretary Ada Deer acted "ultra vires" when Interior published the 1993 List. The Alaska Supreme Court rejected those arguments, and the United States Supreme Court denied certiorari. *McCrary v. Ivanof Bay Vill.*, 265 P.3d 337, 342 (Alaska 2011) ("McCrary has not sustained his heavy burden to demonstrate our precedent in *John v. Baker* should be overturned. . . . Ivanof Bay is a federally recognized tribe."), *cert. denied*, 566 U.S. 963 (2012). In *Simmonds v. Parks*, 329 P.3d 995, 1004 (Alaska 2014), the Alaska Supreme Court again rejected Holl's counsel's arguments that Alaska tribes are not federally recognized, noting that this amounted to a request to "disregard precedent to the contrary from the U.S. District Court, the Ninth Circuit, and the Alaska Supreme Court." And in *Native Village of Eklutna v. U.S. Department of Interior*, Holl's counsel represented an unsuccessful attempted intervenor and again made the same arguments regarding Assistant Secretary Deer. Alaska Charitable Gaming Alliance's Mem. in Supp. of Mot. to Intervene at 17-18, *Native Vill. of Eklutna v. U.S. Dep't of Interior*, No. 1:19-cv-02388, 2021 WL 4306110 (D.D.C. Sep. 22, 2021).

The District Court dismissed this matter on the Tribe's motion pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(7), and 19. ER-11–24; *see* ER-70–94. This appeal followed.

APPLICABLE STANDARDS

The Tribe moved to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(7), and 19.

A. Rule 12(b)(1) Standard. The Tribe made a Rule 12(b)(1) "facial attack" that "the allegations contained in [Holl's] complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack does not require resolving factual disputes, and allows a defendant to assert the court lacks subject matter jurisdiction over the entire action or specific claims in the action. *Id*. Rule 12(b)(1) is "a proper vehicle for invoking [tribal] sovereign immunity from suit." *Alaska Logistics, LLC v. Newtok Vill. Council*, 357 F. Supp. 3d 916, 923 (D. Alaska 2019) (quoting *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015)). The Court of Appeals applies its independent judgment to questions of law in a Rule 12(b)(1) facial attack. *Cruz v. Bondi*, No. 21-70515, 2025 WL 3012158 (9th Cir. Oct. 28, 2025) ("We review questions of law de novo.").

When tribal sovereign immunity is raised in a 12(b)(1) motion, "'the party asserting subject matter jurisdiction [here, Holl] has the burden of proving its

existence,' *i.e*. that immunity does not bar the suit." *Pistor*, 791 F.3d at 1111 (quoting *Miller v. Wright*, 705 F.3d 919, 923 (9th Cir. 2013).

B. Rules 12(b)(7) and 19 Standard. Importantly, when a "required party" is dismissed or cannot be joined to an action, dismissal of the entire action is mandated under Rule 12(b)(7) for "failure to join a [required] party under Rule 19." Rule 19 "sets forth a three-step inquiry": (1) whether the absent party is "required"; (2) if so, "whether joinder of that party is feasible"; and (3) if joinder of the absent party is infeasible, "whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." *Maverick*, 123 F.4th at 972 (quoting *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 943 (9th Cir. 2022)). To determine whether Rule 19 requires the joinder of additional parties, the court may consider evidence outside the pleadings. *Safe Air for Everyone*, 373 F.3d at 1039; *see also McShan v. Sherrill*, 283 F.2d 462, 464 (9th Cir. 1960); *Behrens v. Donnelly*, 236 F.R.D. 509, 512 (D. Haw. 2006) (citing 5C Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil § 1359 at 68 (3d ed. 2004)). This Court reviews a District Court's dismissal of an action under Rule 19(b) for abuse of discretion. *Maverick*, 123 F.4th at 971 (quoting *Klamath Irrigation Dist.*, 48 F.4th at 943).

SUMMARY OF ARGUMENT

The District Court properly dismissed the Tribe on sovereign immunity grounds. There is no serious question that the Tribe is a federally recognized Indian tribe: it is included on the list of federally recognized tribes published annually by the Department of the Interior, which the courts have uniformly held to be the definitive list of tribes that enjoy federal recognition status. With respect to Alaska tribes specifically, state and federal courts have repeatedly confirmed that those tribes on the federal recognition list have sovereign status.

Holl attempts to challenge the validity of the Department's 1993 version of the federally recognized tribe list, which confirmed the status of Alaska tribes. But all of Holl's arguments have already been rejected by the courts multiple times over. Conferring federal recognition status is squarely within the Secretary's authority, and Congress has ratified that exercise of authority with respect to the 1993 List specifically. Moreover, any attempt to challenge the 1993 List is long since barred by the six-year statute of limitations for claims against the federal government.

Holl has not disputed that *if* the Tribe is federally recognized, it possesses sovereign immunity from suit and must be dismissed. Having correctly concluded that the Tribe is a federally recognized sovereign tribe, the District Court's dismissal of the Tribe due to tribal sovereign immunity was also correct.

Finally, because the tribe is a required party under Federal Rule of Civil Procedure 19(a)(1) but cannot be joined due to its sovereign immunity, the District Court properly dismissed this action in its entirety. The Tribe has indisputable economic and sovereign interests in the outcome of this case, and those interests differ from the federal government's interests; indeed, the federal government has previously changed position on the key legal issues underlying the merits of the challenged action, and it appears to be considering whether to change position again. The federal government cannot adequately represent the Tribe here, making the Tribe a required party. Under Rule 19(b), this Court's precedent makes clear that when a Tribe is a required party that cannot be joined due to sovereign immunity, "equity and good conscience" require dismissal of the lawsuit. Far from being an abuse of discretion, as Holl contends, the District Court's dismissal was a correct and routine application of this Circuit's precedent. The decision below should be affirmed.

ARGUMENT

I. The District Court Correctly Dismissed the Tribe Based on Tribal Sovereign Immunity from Suit.

Although it is sometimes said that "Alaska is different," *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016), when it comes to federal recognition of tribes, Alaska tribes are recognized on equal footing with all other federally recognized tribes in the country. The federal courts and the State of Alaska's courts have so held in all prior

attempts to challenge the Department's 1993 recognition of Alaska tribes. *See supra* n.6.

A. The Tribe is Federally Recognized.

Federal recognition of a tribe "may arise from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity." *Jamul Action Comm.*, 974 F.3d at 992 (quoting *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004)). By long-standing and established definition, a "[f]ederally recognized Indian tribe' is '*an entity listed on the Department of the Interior's list* under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship." *Agua Caliente Tribe of Cupeño Indians of Pala Rsrv. v. Sweeney*, 932 F.3d 1207, 1217 (9th Cir. 2019) (emphasis in original) (first quoting 25 C.F.R. § 83.1; and then citing *Wyandot Nation of Kansas v. United States*, 858 F.3d 1392, 1398 (Fed. Cir. 2017) ("We are persuaded that the List Act regulatory scheme exclusively governs federal recognition of Indian tribes.")). This Court noted that "[w]hen a tribe is federally recognized, it confers a suite of federal protections." *Agua Caliente*, 932 F.3d at 1213 (first citing 25 C.F.R. § 83.2; and then citing and quoting *Kahawaiolaa*, 386 F.3d at 1273 ("Federal recognition affords important rights and protections to Indian tribes, including limited sovereign immunity, powers of self-government, the right

to control the lands held in trust for them by the federal government, and the right to apply for a number of federal services.")). Federal recognition "is a formal political act confirming the tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government." Felix Cohen, Cohen's Handbook of Federal Indian Law § 3.02[3], at 133-34 (Nell Jessup Newton ed., 2012).

Here, the Tribe is included on the Department's List of federally recognized tribes, 89 Fed. Reg. 99899, 99902 (Dec. 11, 2024), and has been included on every such List since the Department began publishing the List with Alaska tribes in 1982, *see, e.g.*, ER-116–17 ¶¶ 26-27 (admitting Tribe was on the 1982, 1983, 1985, 1986, and 1988 Lists), ER-122 ¶ 34 (admitting Tribe was on the 1993 List).[7] This should be the end of the matter.

Yet Holl attempts to challenge the validity of the 1993 List that expressly recognized Alaska tribes as sovereign tribes. Holl claims, in essence, that effective and vigorous advocacy by tribal attorneys in the early 1990s resulted in the Department of the Interior confirming that the Tribe and the other Alaska tribes on the 1993 List are federally-recognized. Opening Br. 12-14 ("the [tribal] attorneys

[7] Holl does not challenge the Tribe's inclusion on the pre-1993 Lists. The Department published a list in 1979 but did not include Alaska tribes, explaining that the list of Alaska tribes would "be published at a later date." 58 Fed. Reg. at 54364 (quoting 44 Fed. Reg. 7325 (Feb. 9, 1979)).

. . . concocted a scheme"). As an initial matter, Holl's complaints about the efforts that led to the adoption of the 1993 List (in Holl's telling) ignore the basic principle that citizens may petition the government to take a particular action; indeed, "citizen advocacy . . . is precisely the type of leverage that in a democracy ought to be employed against the branches that were intended to be responsive to public attitudes." *United States v. Richardson*, 418 U.S. 166, 189 (1974) (Powell, J., concurring). More relevant to the legal question here, Holl argues that in 1993 the Department did not have authority to "create new 'federally recognized tribes' in Alaska or at any other location . . . unilaterally by executive branch agency fiat." *Id.* at 31, 35. Holl describes the Department's 1993 List as "The Final Agency Action"; asserts that this "Final Agency Action" was "*Ultra Vires*," *id.* at 25; and argues "[t]he district court's holding to the contrary was clear error." *Id.* at 36. All of these arguments are entirely meritless.

The Preamble to the Department's 1993 List states that it was intended "to eliminate any doubt" raised by earlier iterations of the List that the listed Alaska Native Villages, including the Tribe, "are distinctly Native communities and have *the same status as tribes in the contiguous 48 states*." ER-119; 58 Fed. Reg. at 54365 (emphasis added). The Preamble reiterates that the 1993 List was

> published to clarify that the [Alaska] villages and regional tribes listed [here] are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, they have the same governmental status as other federally acknowledged Indian tribes by virtue of their

> . . . government-to-government relationship with the United States; [and] are entitled to the same protection, immunities, [and] privileges as other acknowledged tribes.

58 Fed. Reg. at 54366.

One year later, in 1994, Congress *twice ratified* Interior's practice of recognizing tribes through the List. First, the Federally Recognized Indian Tribe List Act specifically directed the Department to annually publish "a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Pub. L. No. 103-454, § 104, 108 Stat. 4791, 4792 (Nov. 2, 1994) (codified at 25 U.S.C. § 5131).

In the same Public Law, Congress also enacted the Tlingit and Haida Status Clarification Act, Pub. L. No. 103-454, tit. II, 108 Stat 4791, 4792-93 (Nov. 2, 1994). This Act reaffirmed that "on October 21, 1993, the Secretary of the Interior published a list of federally recognized Indian tribes pursuant to part 83 of title 25 of the Code of Federal Regulations," *id.* tit. II, § 202(2). To remove all doubt, Congress admonished the Secretary for *failing to include* Tlingit and Haida on the 1993 List, and instructed that Tlingit and Haida "continues to be a federally recognized Indian tribe." *Id.* tit. II, §§ 202(3)-(5), 203. Congress mandated specifically that "[n]othing in [the Tlingit and Haida Status Clarification Act] shall be interpreted to diminish or interfere with the government-to-government relationship between the United States

and *other federally recognized Alaska Native tribes*." *Id.* tit. II, § 204(a) (emphasis added).[8]

As the Alaska Supreme Court described in a case asserting essentially same theories advanced here:

> If the Department [of the Interior] or the courts have misconstrued congressional intent [in the List Act], Congress has had ample opportunity to clarify the Department's authority: the Department published its 'preliminary list' of eligible Alaska Native tribes in 1982, recognized Alaska Native tribes explicitly in the 1993 list, and included Alaska Native tribes on each subsequent list. Congress chose not to override those actions when it enacted the Tribe List Act, but conversely overrode the Department's omission of one Alaska Indian tribe from the 1993 list.

McCrary, 265 P.3d at 341 (citations omitted); *see also id*. at 338 ("McCrary sought 'a declaratory judgment that neither Congress nor the Secretary of the Interior nor any other official of [the Department] . . . has recognized the members of [Ivanof Bay] to be a 'federally recognized tribe' and, as a consequence, [Ivanof Bay] does not possess sovereign immunity.").

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[8] The 1995 List explains Congress's ratification of the 1993 List. 60 Fed. Reg. 9250, 9251, 1995 WL 61820 (Feb. 16, 1995) ("Subsequent to the publication of the October 1993 list, Congress enacted two significant pieces of legislation. First, in the Act of May 31, 1994 (P.L. 103-263; 108 Stat. 707), Congress confirmed that the Secretary can make no distinctions among tribes as a general matter of Federal law. Second, in the Act of November 2, 1994 (P.L. 103-454; 108 Stat. 4791), Congress confirmed the Secretary's authority and responsibility to establish a list of Indian tribes and mandated that he publish such a list annually.").

The District Court correctly rejected such arguments here, holding that Congress delegated to the Executive Branch authority concerning "'the management of all Indian affairs and of all matters arising out of Indian relations[,]' subject to, in pertinent part, the regulations of the President," ER-18 (citing 25 U.S.C. § 2; 25 U.S.C. § 9), which "[c]ourts have interpreted . . . as authorizing the executive branch to recognize tribes," ER-18–19 (first citing *Miami Nation of Indians of Indiana, Inc. v. U.S. Dep't of the Interior*, 255 F.3d 342, 345 (7th Cir. 2001); and then citing *Eagle Bear, Inc. v. Indep. Bank*, 705 F. Supp. 3d 1141, 1147 (D. Mont. 2023)). The District Court further correctly held that Congress ratified the 1993 List in the List Act and the Tlingit and Haida Status Clarification Act. ER-19.

Far from being *ultra vires*, therefore, the 1993 List and all subsequent Lists were an exercise of the Secretary's authority that has been affirmed by both Congress and the courts. *See, e.g.*, *United States v. Zepeda*, 792 F.3d 1103, 1114 (9th Cir. 2015) ("The BIA has the authority to determine which tribes satisfy the criteria for federal recognition. It maintains and publishes annually a list of federally recognized tribes." (citations omitted)).

Holl argues, based entirely on tortured semantics, that the List Act did not *actually* ratify the 1993 List, asserting that what the List Act "directs the Secretary of the Interior to publish is not a list of 'federally recognized tribes,'" and is instead "a list of 'Indian tribes' the Secretary recognizes for the singular purpose of being

"eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Opening Br. 37 (emphasis in original). Holl's assertion that "federally recognized tribes" are not "'Indian tribes' the Secretary recognizes" is entirely specious. This argument is a semantic distinction without a difference, and has never been adopted by any court. *See infra* nn.9-10 (collecting cases).

Further, Holl's lengthy, quasi-historical exposition on why the Department's 1993 List was "*Ultra Vires*" is immaterial. Opening Br. 32-36. "Where 'an agency's statutory construction has been "fully brought to the attention of the public and the Congress," and [Congress] has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.'" *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 535 (1982) (quoting *United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979)). *Cf. Douglas v. Xerox Bus. Servs., LLC*, 875 F.3d 884, 889 (9th Cir. 2017) (where Congress makes statutory changes and chooses to leave an agency interpretation in place, "the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress" (quoting *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986))). As noted above, in 1994 Congress conclusively ratified the 1993 List by both the List Act and the Tlingit and Haida Act. *See supra* at 14-17. Congress has additionally prohibited

"any agency decision . . . 'that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.'" *Jamul Action Comm.*, 974 F.3d at 993 (quoting 25 U.S.C. § 5123(f)–(g)).

If any doubt remained, Congress again affirmed the sovereign status of Alaska tribes in the Violence Against Women Act Reauthorization Act of 2022, which expressly recognizes Alaska tribes' authority to exercise civil and criminal jurisdiction within their villages. 25 U.S.C. § 1305(a) ("Congress recognizes and affirms the inherent authority of any Indian tribe occupying a Village in [Alaska] to exercise criminal and civil jurisdiction over all Indians present in the Village."); *see also id.* § 1305(b)-(d) (also providing for civil and criminal jurisdiction over *non*-Indians in specified circumstances); Pub. L. No. 117-103, Div. W, tit. VIII, subtit. B, § 811(a)(4), 136 Stat. 49, 905 (2022) (relying on "the unique legal relationship of the United States to Indian Tribes" as a basis for the statute).

Consistent with congressional mandates, federal courts have uniformly affirmed Alaska tribes' federally recognized status, including the Tribe's. *E.g.*, *Native Vill. of Eklutna v. U.S. Dep't of Interior*, No. 19-cv-2388, 2021 WL 4306110, at *1 (D.D.C. Sept. 22, 2021) ("Eklutna is a federally recognized Indian tribe of the

Dena'ina people . . . .").[9] Alaska's courts have similarly affirmed that Alaska tribes on the List possess federally recognized status, including sovereign immunity from suit. *See, e.g.*, *John v. Baker*, 982 P.2d 738, 750 (Alaska 1999) (recognizing Alaska Native villages on the List "as sovereign entities"); *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1176 (Alaska 2017) ("We have long held that federally recognized tribes in Alaska are sovereign entities entitled to tribal sovereign immunity in Alaska state court.").[10]

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[9] Numerous other court decisions have confirmed this conclusion. *See, e.g.*, *Cook Inlet Tribal Council v. Mandregan*, 348 F. Supp. 3d 1, 4 (D.D.C. 2018) (listing Native Village of Eklutna as one of "eight federally-recognized tribes" whose representatives govern a regional tribal organization), *order vacated in part on other grounds on reconsideration*, No. 14-cv-1835, 2019 WL 3816573 (D.D.C. Aug. 14, 2019), *rev'd and remanded on other grounds sub nom.*, *Cook Inlet Tribal Council, Inc. v. Dotomain*, 10 F.4th 892 (D.C. Cir. 2021); *Chilkat Indian Vill. of Klukwan v. Bureau of Land Mgmt.*, No. 17-cv-00253, 2018 WL 9854668, at *1 (D. Alaska May 24, 2018) ("Plaintiff Chilkat Indian Village of Klukwan is a federally recognized Indian tribe . . . ."); *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida*, No. 15-cv-00004, 2015 WL 4909955, at *1 (D. Alaska Aug. 17, 2015) ("Plaintiff Douglas Indian Association . . . is a federally recognized Indian tribe . . . ."); *M.J. ex rel. Beebe v. United States*, 721 F.3d 1079, 1084 (9th Cir. 2013) (Alaska Native Village of Kwinhagak enjoys "sovereign immunity as an Indian tribe").

[10] The Alaska Supreme Court has affirmed this conclusion many times over. *E.g.*, *Ito v. Copper River Native Ass'n*, 547 P.3d 1003, 1010 (Alaska 2024) ("Among the core aspects of sovereignty that tribes possess . . . is the 'common-law immunity from suit traditionally enjoyed by sovereign powers.'" (omission in original) (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014))); *McCrary*, 265 P.3d at 340 ("[O]ur conclusion regarding the Executive Branch's tribal recognition and Congress's approval through the Tribe List Act was carefully considered and adopted by the entire court."); *cf. State v. Native Vill. of Tanana*, 249 P.3d 734, 750 (Alaska 2011); *In re C.R.H.*, 29 P.3d 849, 851 (Alaska 2001) ("Federally recognized tribes, including the Native Village of Nikolai, retain their

Finally, even if the sovereign status of Alaska tribes had not already been reaffirmed many times over, Holl's challenge to the 1993 List also fails because it comes three decades too late. Holl alleges the "Final Agency Action" at issue is the Department's publication of the 1993 List. Opening Br. 25. But 28 U.S.C. § 2401(a) requires that any civil action against the United States be brought within six years of accrual. This Court has held the six-year limitation "applies to actions brought under the APA," including decisions about tribal recognition. *Big Lagoon Rancheria v. California*, 789 F.3d 947, 954 (2015) (dismissing APA challenge to BIA's recognition of Big Lagoon Rancheria Tribe as time-barred) (quoting *Wind River Mining Corp. v. United States*, 946 F.2d 710, 713 (9th Cir. 1991)). The statute of limitations for Holl's challenge to the Department's 1993 List expired in 1999.

To avoid the statute of limitations, Holl pretextually challenges the NIGC's 2024 approval allowing the Tribe to open its gaming facility. In fact, this case is simply a transparent and very late collateral attack on the 1993 List, "just the sort of end-run" around the APA statute of limitation period that this Court has consistently "refused to allow." *See id.* Holl is making exactly the sort of meritless claim this

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sovereign powers unless Congress specifically withdraws their authority." (internal citation omitted)). The State of Alaska has enacted legislation recognizing Alaska tribes by direct reference to the List Act. Alaska Stat. § 01.15.100 ("The state recognizes all tribes in the state that are federally recognized under 25 U.S.C. 5130 and 5131 [the List Act].").

Court "hope[d]" its opinion in *Jamul Action Committee* would "finally put an end to." 974 F.3d at 988-89.[11]

In short, Holl's arguments regarding the 1993 List are meritless, have been repeatedly rejected by the courts, and are time-barred. The District Court correctly concluded that the Tribe is a federally recognized Tribe, ER-20, and this Court should affirm that conclusion.

B. The Tribe Possesses Sovereign Immunity.

Once a tribe is federally recognized, it, like all tribes on the Department's List, has "the same privileges and immunities, *including tribal sovereign immunity*, that other federally recognized Indian tribes possess." *Jamul Action Comm.*, 974 F.3d at 989 (emphasis added). The Department's regulations concerning federal recognition confirm that when a tribe has achieved "Federal recognition status [it will be added] to the Department's list of federally recognized Indian tribes. Federal recognition . . . [m]eans the tribe is entitled to the immunities and privileges available to other

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[11] Nor can Holl seek refuge in the Supreme Court's recent decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799 (2024). That case allowed a merchant to challenge a regulation regarding credit card processing fees within six years of the date that the *merchant* was first subject to the regulation, finding the merchant's cause of action accrued on that date, though the regulation had been promulgated more than six years earlier. *Id.* at 809. But *Corner Post* applies only to "regulated parties." *Id.* at 823. Unlike the merchants in *Corner Post*, which were directly subject to the challenged regulation, here Holl is not regulated by the 1993 List. Accordingly, no new cause of action against the 1993 List has accrued, raising both timeliness and standing concerns.

federally recognized Indian tribes." 25 C.F.R. § 83.2(b). This Court has explained that the List Act was enacted *precisely* "to ensure that Indian tribal entities, once federally recognized and included on the published list of recognized tribes, were not treated differently based on" their method of creation or recognition. *Jamul Action Comm.*, 974 F.3d at 993; *see* 25 U.S.C. § 5123(f) and (g) (provisions added by 1994 amendment to the Indian Reorganization Act protecting Indian tribes' "privileges and immunities"); *see also Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195, 211 (D.D.C. 2013) (holding invalid a regulation that treated federally recognized tribes in Alaska differently from federally recognized tribes elsewhere, in violation of the "privileges and immunities" provisions), *vacated as moot*, 827 F.3d 100 (D.C. Cir. 2016).

As Holl concedes here, "[r]ecognition is no minor matter." Opening Br. 6. Critically, "[a]mong the core aspects of sovereignty that tribes possess is the common-law immunity from suit traditionally enjoyed by sovereign powers." *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016 (9th Cir. 2016) (cleaned up).[12] Holl conceded in the District Court that if the Tribe is federally

[12] Once recognized, a tribe "may not be terminated except by an Act of Congress." § 103(4), (5), 108 Stat. at 4791–92. Federal courts defer to Congress and the executive branch in determining whether a particular group is recognized as a tribe. *See, e.g.*, *Wyandot Nation of Kansas v. United States*, 858 F.3d 1392, 1398 (Fed. Cir. 2017) ("[T]he List Act regulatory scheme exclusively governs federal recognition of Indian tribes."); *Mdewakanton Band of Sioux in Minn. v. Haaland*, 848 F. App'x 439, 440 (D.C. Cir. 2021) ("The List Act grants the Secretary a pivotal role in recognition

recognized, then it "possesses sovereign immunity and [the] court should grant its motion" to dismiss. Opp'n to Mot. to Dismiss First Am. Compl. at 4-5, *Holl v. Avery*, No. 24-cv-00273, 2025 WL 1785887 (D. Alaska June 27, 2025), Dkt. No. 26.

As described above, there is no legitimate question that the Tribe is federally recognized, as it is included on the Department's list of federally recognized Tribes, 89 Fed. Reg. at 99902, which Congress has ratified and courts have repeatedly affirmed. Nor does Holl dispute that federally recognized tribes possess sovereign immunity. The District Court therefore correctly concluded:

> In sum, the Tribe is federally recognized, meaning that it is entitled to tribal sovereign immunity. Because the Tribe has not waived this immunity . . . , the court must dismiss the Tribe from this action . . . .

ER-20 (citing *Maverick*, 123 F.4th at 978); *see also id.* at 971.

The District Court's Order dismissing the Tribe from this matter based on tribal sovereign immunity was correct.

II. This Matter Cannot Proceed in the Tribe's Absence.

Holl next argues that the District Court erred in finding the Tribe is a "required party" under Rule 19 and dismissing this matter under Rule 12(b)(7). The Tribe is a

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decisions, calling on her to 'publish in the Federal Register a list of all Indian tribes which *the Secretary recognizes* to be eligible . . . .'" (quoting 25 U.S.C. § 5131(a) (emphasis in original)); *see also Kanam v. Haaland*, No. 21-1690, 2022 WL 2315552, at *1 (D.D.C. 2022) (citing *United States v. Holliday*, 70 U.S. 407, 419 (1865)).

named party defendant, and a party may move for dismissal of a complaint for "failure to join a party under Rule 19." *See* Fed. R. Civ. P. 12(b)(7); *Maverick*, 123 F.4th at 971; *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1457 (9th Cir. 1994). The question under Rules 12(b)(7) and 19(b) is whether the Tribe "is so situated that disposing of the action in the [Tribe's] absence may . . . as a practical matter impair or impede the [Tribe's] ability to protect the [Tribe's] interest" in the action. Fed. R. Civ. P. 19(a)(1)(B)(i).

As Holl concedes, this Court reviews the District Court's dismissal of an action under Rule 19(b) for abuse of discretion. Opening Br. 24 (citing *Maverick*, 123 F.4th at 971). In considering dismissal under Rules 19 and 12(b)(7), courts follow a "three step inquiry":

> [1] First, we determine whether the absent party is "required" under Rule 19(a). [2] If the absent party is required, we then "determine whether joinder of that party is feasible." [3] If joinder is infeasible, [under Rule 19(b)] we must then "determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed."

Maverick, 123 F.4th at 972 (citations omitted) (quoting *Klamath Irrigation*, 48 F.4th at 943). The Rule 19 analysis is "complex, and determinations are case specific." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 863 (2008); *see also Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990) ("The [Rule 19] inquiry is a practical one and fact specific."). Here, the District Court correctly applied this test and concluded that the action must be dismissed.

A. The Tribe is a Required Party Under Rule 19(a).

The first factor is whether the Tribe is a required party under Rule 19(a). In this context the inquiry has two elements: whether the Tribe "claims an interest relating to the subject of the action," Rule 19(a)(1)(B); and whether the Tribe "is so situated that disposing of the action in the [Tribe's] absence may: (i) as a practical matter impair or impede the [Tribe's] ability to protect the interest," Rule 19(a)(1)(B)(i).

1. The Tribe Has an Indisputable Rule 19(a) Interest.

Holl seeks to have this Court void the Tribe's federally recognized tribal status after decades of federal recognition. ER-138–39.[13] With such a drastic result as Holl's goal, there can be no dispute that Holl's claims directly, substantially, and quite intentionally "implicate[] the Tribe's legally protected economic and sovereign interests," *Maverick*, 123 F.4th at 972; *Klamath Irrigation*, 48 F.4th at 943-44, and implicate the Tribe's "right[s] already granted," *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 852 (9th Cir. 2019). Holl's attack on

[13] As noted above, Holl's Complaint requests judicial declarations that "neither Congress nor the [Department] of the Interior" has recognized the Tribe as a "federally recognized tribe . . . possess[ing] powers of self-government"; that the Tribe is "not an 'Indian Tribe'" as defined in IGRA; that the Ondola Allotment, on which the Tribe's gaming facility operates, is not "'Indian country' and is not 'Indian lands'" as defined in IGRA; and that the NGIC's approval of the Tribe's Gaming Ordinance "was *void ab initio* and . . . taken in excess of [the NIGC's] statutory authority." ER-138–39.

the Tribe's federal recognition strikes at the heart of the Tribe's identity, its existence, and its substantive rights under federal law. "As a matter of federal law, federal recognition of a tribe 'affords important rights and protections to Indian tribes, including limited sovereign immunity.'" *Jamul Action Comm.*, 974 F.3d at 992 (quoting *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004)); *see also Kahawaiolaa*, 386 F.3d at 1273 ("[A]s far as the federal government is concerned, an American Indian tribe does not exist as a legal entity unless the federal government decides that it exists.").

Most importantly, as the District Court correctly determined, the Tribe is a required party "because 'the [Tribe] has a protected interest in . . . its status as a federally recognized tribe.'" ER-22 (alteration and omission in original) (quoting *Jamul Action Comm.*, 974 F.3d at 997).

It is indisputable that "the potential prejudice to the Tribe if a judgment were rendered in its absence 'would be enormous.'" *Maverick*, 123 F.4th at 980 (quoting *American Greyhound Racing Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2022)). Among other factors, if the Tribe is divested of federal recognition, it will become ineligible for federal Indian programs and lose its sovereign immunity from suit. For just a few of many examples, the Tribe would not be able to contract with the Department of the Interior under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301-5423 ("ISDEAA"), an immense blow to the

Tribe's housing, economic development, education, and training programs. The Tribe would no longer be eligible to contract with the Department of Health and Human Services to operate ISDEAA health programs and participate in the Alaska Tribal Health System. *See, e.g.*, Alaska Native Health Board, *Alaska Tribal Health System*, https://www.anhb.org/tribal-resources/alaska-tribal-health-system/ (last visited January 8, 2026).The Tribe would lose the protections of the Indian Child Welfare Act, which protects the Tribe's interest in its children and allows the Tribe to participate in State adoption and dependency proceedings. 25 U.S.C. §§ 1901-1963. The Tribe would lose the cultural resources protections of the Native American Graves Protection and Repatriation Act. 25 U.S.C. §§ 3001-3013.

On a more granular level, like the Shoalwater Bay Tribe in *Maverick*, "the Tribe has a legitimate interest in the legality" of its Gaming Ordinance and a deep sovereignty interest in enacting and enforcing its laws. 123 F.4th at 972; *see* 25 U.S.C. § 2710 ("Tribal gaming ordinances"); *see also Diné Citizens*, 932 F.3d at 856 (finding Navajo Nation's "*sovereign* interest in controlling its own resources" is a protectable interest under Rule 19); *Backcountry Against Dumps v. U.S. Bureau of Indian Affs.*, No. 20-cv-2343, 2021 WL 3611049, at *9 (S.D. Cal. Aug. 6, 2021) (tribe could be prejudiced by loss of "tens of millions of dollars in revenue that it plans to use to fund its governance"), *aff'd*, No. 21-55869, 2022 WL 15523095 (9th Cir. Oct. 27, 2022). Holl's claims directly attack the Tribe's "legitimate and

substantial interest[s] in the legality of its" gaming operation and "the Tribe's sovereign rights[.]" *Maverick*, 123 F.4th at 980. Moreover, the "subject of the action" directly implicates the Tribe's unquestioned, statutorily recognized "legitimate interests" in developing the Ondola Allotment for Tribal economic self-sufficiency to provide employment opportunities for Tribal members and to generate revenue for the Tribe.[14] This action equally implicates the Tribe's economic interest in continuing to operate the gaming facility and in performing all its related business agreements, including vendor contracts, equipment leases, and employment contracts. *See Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1156 (9th Cir. 2002) ("[N]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable." (quoting *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975))). As with the Navajo Nation in *Diné Citizens*, the Tribe has an "interest in the existing lease"

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[14] IGRA expressly recognizes and protects these interests. *See* 25 U.S.C. ch. 29 ("Indian Gaming Regulation"); *id*. § 2701(4) ("a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government") *id.* § 2702 ("The purpose of this chapter is— (1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments . . . ."); *see also Quileute Indian Tribe*, 18 F.3d at 1460 (loss of "property interests and governing authority over those interests" are protectible interests for Rule 19 purposes).

of the Ondola Allotment and the related federal approvals, because "[w]ithout the proper approvals, the [gaming facility] could not operate, and the [Tribe] would lose a key source of revenue." *Diné Citizens*, 932 F.3d at 853; *see also Am. Greyhound Racing, Inc.*, 305 F.3d at 1024 (tribes' interests "may well be affected *as a practical matter* by the judgment that [their gaming] operations are illegal").

This factor overwhelmingly indicates that the Tribe is a required party.

2. The District Court Correctly Found the Government Cannot Adequately Represent the Tribe's Interests.

The second applicable Rule 19(a) factor is whether the Tribe's absence from this matter would "as a practical matter impair or impede the [Tribe's] ability to protect [its] interest[s]." Fed. R. Civ. P. 19(a)(1)(B)(i). As part of the impairment analysis, courts have generally held that "[a]s a practical matter, an absent party's ability to protect its interest will not be impaired by its absence from the suit where its interest will be adequately represented by existing parties to the suit." *Maverick*, 123 F.4th at 973 (quoting *Alto v. Black*, 738 F.3d 1111, 1127 (9th Cir. 2013)). Holl argues the Tribe's ability to protect its interests here would not be impaired because the Government "can represent the [T]ribe's interest as long as there is 'no conflict' between the interest of the United States and the interest of the [T]ribe." Opening Br. 44. This argument both misstates the legal standard and fails to account for the demonstrably divergent interests of the Tribe and the federal government here.

(a) "Conflict of Interest" is Not the Rule 19 Standard.

In Maverick, this Court pointed out that

> some of our older Rule 19 cases have made the statement that "[t]he United States can adequately represent an Indian tribe unless there exists a conflict of interest between the United States and the tribe." But it is evident from reading the entire content, the statements form just a piece of the analysis, and do not represent a standalone rule.

123 F.4th at 976 (alteration in original) (citations omitted) (quoting *Southwest Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998)). More recently, as *Maverick* noted, in *Diné Citizens* this Court "explained that the federal government could not adequately represent the tribe's interest because the 'Federal Defendants' interest *might* diverge from that of' the Tribe if the district court decided that 'the federal agencies' analyses underlying the approval was flawed,'" 123 F.4th at 977 (emphases in original) (quoting *Diné Citizens*, 932 F.3d at 855), and concluded that "Federal Defendants *cannot be counted on* to adequately represent [the tribe]'s interests," *Diné Citizens*, 932 F.3d at 855 (emphasis added). The correct question is whether the present party's interests "are such *that it will undoubtedly make all* of the absent party's arguments; whether the party is capable of and willing to make such arguments; and whether the absent party would offer any necessary element to the proceedings that the present parties would neglect." *Id.* at 852 (emphasis added) (quoting *Alto*, 738 F.3d at 1127-28).

Holl relies on *Ramah Navajo School Board v. Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996)[15] and *Makah Indian Tribe v. Verity*, 910 F.2d 555 (9th Cir. 1990), but *Ramah* and *Makah* involved very different situations than the one at hand. In those cases, conflicts between non-party tribes raised the issue of whether the United States could adequately represent the various non-party tribes' differing interests. *Ramah* concerned the distribution of a fixed amount of federal funds among multiple tribes. 87 F.3d at 1340. The court found the non-party tribes were not required parties due to the small amounts at issue and because the Secretary had no discretion as to how to distribute the funds, so "there [was] no concern that the Tribes' interests might conflict with one another and keep the Secretary from adequately representing them all." *Id.* at 1352 (citation omitted). By contrast, in *Makah*, this Court found that the United States *could not* adequately represent a group of non-party tribes with divergent interests in the outcome "because potential intertribal conflicts meant the United States could not represent all of them." 910 F.2d at 560. Neither situation is presented in this matter.

(b) The Government has Different Interests than the Tribe.

Holl finds it "difficult to understand how the respective interests of [the Government] and the [Tribe] differ since [they] have the same interest in defending"

[15] Holl erroneously contends *Ramah* is a decision of this Court (and presumably binding precedent), Opening Br. 44-45, but it is a decision of the D.C. Circuit.

the NIGC's approval of the Tribe's Gaming Ordinance. Opening Br. 46. But the Government cannot be "counted on" to "undoubtedly make all of [the Tribe's] arguments" here.[16] *Diné Citizens*, 932 F.3d at 852, 855 (quoting *Alto*, 738 F.3d at 1127-28).

For example, the Government stated to the District Court that the Tribe's motion to dismiss "should be granted under the current state of the law in the Ninth Circuit." Avery Resp. to Mot. to Dismiss. at 6, *Holl v. Avery*, No. 24-cv-00273, 2025 WL 1785887 (D. Alaska June 27, 2025), Dkt. No. 29. But the Government also acknowledged a possible future divergence of interests, and advised that it disagrees with *Diné Citizens* and may "assert in future proceedings that the [Government] is generally the only required and indispensable defendant in [] litigation challenging federal agency action." *Id.* at 6. The District Court properly took notice of the Government's differing interest. ER-22.

Further, even if the Government and the Tribe may take the same *position* on certain issues, there is a fundamental divergence in their respective *interests*. In *Diné Citizens*, this Court held that the United States was not able to adequately represent

[16] Acting Chair Avery of the NIGC, sued in her official capacity, is the other defendant in this action. "An action against an officer, operating in his or her official capacity as a United States agent, operates as a claim against the United States." *Ministerio Roca Solida v. McKelvey*, 820 F.3d 1090, 1095 (9th Cir. 2016) (citing *Farmer v. Perrill*, 275 F.3d 958, 963 (10th Cir. 2001)).

an absent Navajo Nation tribal corporation because the Government's obligation to follow relevant laws was distinct from the Nation's interests in maintaining the mining approvals the Government had granted. 932 F.3d at 855. While federal defendants "have an interest in defending their own analyses," the Government "do[es] not share an interest in the outcome of the approvals—the continued operation of" the Nation's coal mine and associated powerplant. *Id.* at 855; *see also Klamath Irrigation*, 48 F.4th at 945; *Jamul Action Comm.*, 974 F.3d at 997-98 (applying *Diné Citizens*, 932 F.3d at 855); *Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1101 (9th Cir. 1994) ("We have held that the United States cannot adequately represent an absent tribe, when it may face competing interests.").

Here, the District Court followed *Diné Citizens* precisely and held that the "Government cannot adequately represent the Tribe's interests because the Government's interests in determining whether a tribe is federally recognized and whether to approve a gaming ordinance differ from the Tribe's interests in preserving federal recognition and its approved gaming ordinance." ER-22–23 (citing *Diné Citizens*, 932 F.3d at 855). This Court applied the same reasoning and reached the same result in *Maverick*, noting that the absent Shoalwater Tribe and the federal government "share[d] an interest in the ultimate outcome of this case for very different reasons":

> [T]hough the federal government maintains an interest in defending its own analysis that formed the basis of its decision to approve the sports-betting compact amendments, it does not share an interest in the outcome of the continued approval of the sports-betting compact amendments—the continued operation of sports-betting at tribal casinos. In contrast, the Tribe is interested in defending the approval of the compacts and compact amendments to ensure the continued operation of sports betting and other class III gaming on its land. Whereas the Federal Defendants' interests in this litigation begin and end with defending the compacts, for the Tribe, the stakes of this litigation extend beyond the fate of the compact and implicate sovereign interests in self-governance.

Id. at 974-75 (cleaned up).

Maverick concluded that "[b]ecause the federal government's interest in this litigation is meaningfully distinct from the Tribe's, the [Government] cannot serve as an adequate representative of the Tribe." *Id.* at 975. That is exactly the case in this matter. The Government's interests in defending the NIGC's approval of the Tribe's Gaming Ordinance and the Indian lands opinion are "meaningfully distinct" from the Tribe's sovereign and proprietary interests in continuing the gaming operation. *Id.*; *Diné Citizens*, 932 F.3d at 856. The Tribe cannot depend on the Government to represent its interests and, therefore, the Tribe is a "required party" to this matter under Rule 19(a).

(c) The Government Repeatedly Changed Positions.

Moreover, the Department has changed views several times in recent years on whether Alaska Native allotments such as the Ondola Allotment are "Indian lands" eligible for IGRA gaming, at times taking a position adverse to the Tribe.

The NIGC's 2024 decision to approve the Tribe's Gaming Ordinance was based in part on the Interior Solicitor's 2024 M-Opinion that the "Native Allotments are subject to the same legal principles governing allotments in the lower 48 states. Under those principles, there is a presumption of tribal jurisdiction within Indian country, which may only be abrogated by express congressional action. No such congressional abrogation exists with respect to [Alaska] Native Allotments." *Partial Withdrawal of Solicitor's Opinion M-36975, "Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers," and Clarification of Tribal Jurisdiction Over Alaska Native Allotments*, Office of Solicitor, Dep't of Interior, Op. M-37079 (Feb. 1, 2024) ("Anderson M-Opinion").[17] Here, the NIGC decision expressly relied on the Anderson M-Opinion. ER-98–101.

In 2018, six years earlier, the Department had reached the opposite conclusion based on a much earlier 1993 Solicitor's Opinion. *See Native Village of Eklutna v. United States Department of the Interior*, No. 19-cv-2388 (DLF), 2021 WL 4306110, at *1-3 (D.D.C. Sept. 22, 2021); *see also Governmental Jurisdiction of Alaska Native*

[17] Available at https://www.doi.gov/sites/default/files/documents/2024-02/m37079-partial-wd-m36975-and-clarification-trbl-jurisdiction-over-ak-native-allotments-2124.pdf.

Villages Over Land and Nonmembers, Office of Solicitor, Dep't of Interior, Op. M-36975 (Jan. 11, 1993) ("Sansonetti M-Opinion").[18]

In September 2025, one year after the NIGC's 2024 Indian Lands Opinion, the Department's Deputy Secretary reversed the Department's position once again, returning to the Sansonetti M-Opinion's approach. *See* Deputy Secretary of the Interior, Memorandum, "*Withdrawal of Solicitor Opinion M-37079, "Partial Withdrawal of Solicitor's Opinion M-36975, 'Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers,' and Clarification of Jurisdiction Over Alaska Native Allotments*" (Sept. 25, 2025).[19] The Deputy Secretary directed a reevaluation of actions taken based on the Anderson M-Opinion. *Id.* at 2.

Given the Department's frequently changing positions, there is no assurance whatsoever that the Government can "be counted on" to "undoubtedly make all of the [Tribe's] arguments" defending the NIGC approval of the Tribe's Gaming Ordinance and the accompanying Indian Lands Opinion. *Diné Citizens*, 932 F.3d at 852, 855; *see also Klamath Irrigation*, 48 F.4th at 945; *see also Cherokee Nation of Okla. v. Babbitt*, 117 F.3d 1489, 1497 (D.C. Cir. 1997) (Government could not

[18] Available at https://www.doi.gov/sites/doi.gov/files/uploads/m-36975.pdf.

[19] Available at https://www.doi.gov/sites/default/files/documents/2025-09/withdrawal-solicitor-opinion-m-37079-signed-20250925.pdf.

adequately represent Delaware Tribe's interests when "the Department has twice reversed its position" and "the Department may reverse itself again").

In sum, the District Court was correct that "[t]he Government cannot adequately represent the Tribe's interests because the Government's interests in determining whether a tribe is federally recognized and whether to approve a gaming ordinance differ from the Tribe's interests in preserving federal recognition and its approved gaming ordinance." ER 22-23 (citing *Diné Citizens*, 932 F.3d at 855). The District Court's conclusion on this point was within its sound discretion and was not, as Holl alleges, "clear error." *See* Opening Br. 49.

B. The District Court Correctly Held That Joinder of the Tribe is "Infeasible" under Rule 19(B).

The next step in the Rule 19 analysis is to determine whether the required party can be joined. Because the Tribe is federally recognized, sovereign immunity resolves the initial Rule 19(b) question of whether it is feasible to join the Tribe. First, "[t]ribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or clear waiver by the tribe." *Native Vill. of Eklutna*, 2021 WL 4306110, at *1 ("Eklutna is a federally recognized Indian tribe . . . ."); *see M.J. ex rel. Beebe v. United States*, 721 F.3d at 1084 (Native Village of Kwinhagak, another Alaska tribe, enjoys "sovereign immunity as an Indian tribe"). Accordingly, the courts—including the U.S. Supreme Court—"have time and again treated the

doctrine of tribal immunity as settled law and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 789 (2014) (cleaned up). Second, "[t]his immunity applies to the tribe's commercial as well as governmental activities." *Miller v. Wright*, 705 F.3d 919, 923 (9th Cir. 2013) (quoting *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 725 (9th Cir. 2008)); *see also Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Third, "there 'is a strong presumption against waiver of tribal sovereign immunity,' and any congressional abrogation of tribal sovereign immunity must be unmistakably clear." *Grondal v. United States*, 37 F.4th 610, 617 (9th Cir. 2022) (citation omitted); *see also Oertwich v. Traditional Vill. of Togiak*, 29 F.4th 1108, 1117 (9th Cir. 2022) ("[A] tribe only waives its immunity if it does so expressly." (citation omitted)), *withdrawn on other grounds*, 41 F.4th 1193 (9th Cir. 2022). Holl does not allege either Congressional abrogation or tribal waiver of Eklutna's sovereign immunity, nor could Holl do so, since neither has occurred.

Holl has the burden of establishing jurisdiction, *Pistor*, 791 F.3d at 1111, and has not met that burden. The Tribe has sovereign immunity. Under Rule 12(b)(1) it is "infeasible" for the Tribe to be joined in this action.

C. The District Court Correctly Held That "In Equity and Good Conscience" This Matter Should be Dismissed.

Once it is determined that joining a required party is "infeasible," "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." *Maverick*, 123 F.4th 972 (quoting Fed. R. Civ. P. 19(b)). Rule 19(b) directs the court to balance the four equitable factors under Rule 19 when considering dismissal: "(1) the prejudice to any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; (3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and (4) whether there exists an alternative forum." *Dawavendewa*, 276 F.3d at 1161-62.

1. Sovereign Immunity Cabins the Court's Decision.

The Rule 19(b) equity and good conscience determination "almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity." *Jamul Action Comm.*, 974 F.3d at 998. And, although the Rule 19(b) factors still must be considered, the court's discretion "in balancing the equities . . . is to a great degree circumscribed, and the scale is already heavily tipped in favor of dismissal." *Northern Arapaho Tribe v. Harnsberger*, 660 F. Supp. 2d 1264, 1280 (D. Wyo. 2009), *aff'd in part and vacated in part*, 697 F.3d 1272 (10th Cir. 2012); *Quileute Indian Tribe*, 18 F.3d at 1460 ("[P]laintiff's interest in litigating a claim may be outweighed by a tribe's interest in maintaining its sovereign immunity." (quoting

Confederated Tribes of Chehalis Indian Rsrv. v. Lujan, 928 F.2d 1496, 1500 (9th Cir. 1991)); *see also Comenout v. Whitener*, No. C15-5054 BHS, 2015 WL 917631, at *4 (W.D. Wash. Mar. 3, 2015). As the Tenth Circuit stated, "[w]hen, as here, a necessary party under Rule 19(a) is immune from suit, there is very little room for balancing of other factors set out in Rule 19(b), because immunity may be viewed as one of those interests compelling by themselves." *Enter. Mgmt. Consultants, Inc v. U.S. ex rel. Hodel*, 883 F.2d 890, 894 (10th Cir. 1989) (quotations omitted).

2. The District Court's Balance of the Rule 19 Factors Was Not an Abuse of Discretion.

Holl asserts that after the District Court concluded that sovereign immunity tipped the scale in favor of dismissal, the court "then refused to consider, much less balance, the three other FRCP 19(b) factors – and most particularly the fourth factor," regarding whether Holl "would have an adequate alternative remedy" if the matter was dismissed. Opening Br. 50-51.[20] The District Court in fact exercised its discretion and found that "in this context, a detailed analysis of the factors is not necessary because 'having concluded that the Tribe is a party required to be joined

[20] The District Court's decision not to include additional detail is at least partly the result of the fact that Holl did not make *any* argument regarding the fourth factor before the District Court (and indeed devoted less than three pages of the opposition brief to the Tribe's Rule 19 arguments). Holl had ample opportunity to respond to the Tribe's arguments regarding the Rule 19(b) factors, ER-91–92, and elected not to fully respond. The District Court can hardly be faulted for choosing not to add further detail on an issue the plaintiffs did not even contest.

if feasible, the remaining steps of the Rule 19 analysis are straightforward.'" ER-23 (quoting *Jamul Action Comm.*, 974 F.3d at 988 (cleaned up)). That is because the issues in this matter "go directly to the Tribe's status as a federally recognized tribe and to the status of lands upon which the Tribe wishes to operate" its gaming facility." ER-23. The District Court looked to this Court's decisions, and concluded that "[e]quity and good conscience do not permit an action disputing the [Tribe's] status as a federally recognized tribe and its ownership of land in a suit in which the [Tribe] cannot be joined." *Id.* (quoting *Jamul Action Comm.*, 974 F.3d at 988 (second and third alterations in original)).

The District Court's approach was correct and well within its sound discretion. This Court has explained "there is a 'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity." *Diné Citizens*, 932 F.3d at 857 (quoting *White v. Univ. of Cal.*, 765 F.3d 1010, 1028 (9th Cir. 2014)). "[V]irtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether [an alternate] remedy is available, if the absent parties are Indian tribes invested with sovereign immunity." *Id.*

Parties may be left without an adequate remedy when a required tribal party cannot be joined, "[b]ut this result is a common consequence of sovereign immunity, and the tribe's interest in maintaining sovereign immunity outweighs the plaintiffs' interest in litigating their claims." *Am. Greyhound Racing*, 305 F.3d at 1025

(citations omitted); *see also White*, 765 F.3d at 1028; *Friends of Amador County*, 554 F. App'x at 566; *Wagda v. Bank of Am., NA*, No. 22-16846, 2024 WL 1596474, at *1 (9th Cir. Apr. 12, 2024) (affirming Rule 19 dismissal due to California's sovereign immunity); *Williams v. Arizona*, No. 19-15330, 2019 WL 8064707, at *1 (9th Cir. Oct. 21, 2019) (affirming Rule 19 dismissal due to Arizona's sovereign immunity).

3. All Rule 19 Factors Weigh in Favor of Dismissal.

Moreover, even if the Tribe's immunity was not dispositive, each of the four Rule 19(b) factors weighs in favor of dismissal:

Factor 1: The Tribe's "legally protectable interest[s] in [this] action"—federal recognition, tribal sovereignty, operation of its gaming facility, the revenue stream from gaming—would be severely prejudiced if this suit proceeds without the Tribe. *See*, *e.g.*, *Dawavendewa*, 276 F.3d at 1162 (concluding prejudice to "the Nation's economic interests in the lease with [the defendant], namely its ability to provide employment and income for the reservation" and "Nation's sovereign interests in negotiating contractual obligations and governing the reservation" weighed in favor of dismissal).[21]

[21] The Rule 19(b)(1) factor is "essentially the same" as the legal interest test under Rule 19(a). *Skokomish Indian Tribe v. Goldmark*, 994 F. Supp. 2d 1168, 1190 (W.D. Wash. 2014) (citing *Quileute Indian Tribe*, 18 F.3d at 1460, and citing *Confederated Tribes of Chehalis Indian Rsrv.*, 928 F.2d at 1498, and then citing *Am. Greyhound*

Factor 2: Relief cannot be shaped to lessen the prejudice to the Tribe, since Holl's stated goal is to "void" the Tribe's federal recognition, invalidate the Tribe's Gaming Ordinance, and shut down its gaming facility. Thus "the effect of a plaintiff's successful suit would be to impair a right already granted," and "the Navajo Nation inevitably would be prejudiced." *Diné Citizens*, 932 F.3d at 852, 858; *see also Dawavendewa*, 276 F.3d at 1162 (second factor weighed in favor of dismissal because "[a]ny decision mollifying [plaintiff] would prejudice the Nation in its contract with [the defendant] and its governance of the tribe").

Factor 3: As noted above, because Holl's requested relief goes to the heart of the Tribe's interest in its federal recognition, gaming approvals and gaming operation, no adequate remedy can be awarded without the Tribe and without impairing the Tribe's legally protected interests. *See Am. Greyhound Racing*, 305 F.3d at 1025 (third factor weighed in favor of dismissal because "the tribes' protectible interests are impaired" if plaintiffs' requested remedy is awarded); *Dawavendewa*, 276 F.3d at 1162 ("No partial relief is adequate."); *Dewberry v. Kulongoski*, 406 F. Supp. 2d 1136, 1148 (D. Or. 2005) (adequate remedy cannot be rendered in absence of tribe where plaintiffs seek to void the Tribe's gaming

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Racing, 305 F.3d at 1024-25). That factor asks, as relevant here, "whether the [non-party] claims a legally protected interest in the subject of the suit such that a decision in its absence will . . . impair or impede its ability to protect that interest." *Id.* at 1187 (alteration in original).

compact, which would deprive tribe "of the contractual benefits for which [it] bargained" (citation omitted)).

Factor 4: Finally, while there may be no alternate judicial forum for Holl's mission to revoke federal recognition of Alaska's tribes, this result "is a common consequence of sovereign immunity" and does not provide a basis to avoid dismissal of this action. *Diné Citizens*, 932 F.3d at 858 (quoting *Am. Greyhound Racing*, 305 F.3d at 1025); *Dawavendewa*, 276 F.3d at 1162.[22]

In sum, the District Court correctly weighed the factors found that "equity and good conscience" require dismissal of this action. ER 23. This balancing was well within the District Court's discretion. To the extent any further weighing of the factors is required, the record—and Holl's own claims—show that all four Rule 19(b) factors weigh in favor of dismissal.

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[22] Holl disavows any claim based on the "public rights exception," and admits appellants' interests are purely "parochial." Opening Br. 51 n.16 ("[T]he plaintiffs did not assert the public rights exception to FRCP 19(b) because their interest is parochial: they are trying to protect the rural neighborhood in which several plaintiffs have lived for more than twenty years.") (citing *Graton Rancheria*, 2025 WL 2096171 *8). Even if this argument had not been disavowed, the public rights exception does not apply here because (among other reasons) the litigation would fully "destroy the legal entitlements of the absent part[y]," in violation of the limits this Court has placed on the exception. *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996).

CONCLUSION

This action is an extremely late, pretextual challenge to the Department of the Interior's 1993 inclusion of the Tribe and all other Alaska tribes on its List of federally recognized tribes, which followed earlier Lists going back to 1982. The adverse consequences of Holl's requested remedy to "void" recognition of the Tribe (with impact on all 228 tribal governments in Alaska) would be, as this Court said in *Maverick*, "enormous." *See* 123 F.4th at 980 (quoting *Am. Greyhound Racing*, 305 F.3d at 1025). The District Court's decision dismissing this action was correct on the law and within its sound discretion. As the party asserting jurisdiction in the matter, Holl "has the burden of proving its existence, *i.e.* that immunity does not bar the suit." *Pistor*, 791 F.3d at 1111 (quotation omitted). He has not done so.

The Native Village of Eklutna respectfully requests that the District Court's decision be affirmed, and this appeal dismissed.

Dated: January 12, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(B), I certify that:

This brief complies with the type-volume limitation of Cir. R. 32-1 because this brief contains 11,997 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word for Office 365 Times New Roman 14-point font.

Dated: January 12, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system.

Participants in the case who are registered CM/ECF users will be served by the ACMS system.

Dated: January 12, 2026

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STATUTORY ADDENDUM

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Federal Rules of Civil Procedure

Rule 19. Required Joinder of Parties

(a) Persons Required to Be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

. . .

Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (codified at 25 U.S.C. § 5131)

§ 101. Short Title.

This title may be cited as the "Federally Recognized Indian Tribe List Act of 1994".

§ 102. Definitions.

For the purposes of this title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

(3) The term "list" means the list of recognized tribes published by the Secretary pursuant to section 104 of this title.

§ 103. Findings.

The Congress finds that—

(1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;

(2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;

(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;" or by a decision of a United States court;

(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

(6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

(7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 104. Publication of List of Recognized Tribes.

(a) PUBLICATION OF THE LIST.—The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) FREQUENCY OF PUBLICATION.—The list shall be published within 60 days of enactment of this Act, and annually on or before every January 30 thereafter.

Tlingit and Haida Status Clarification Act, Pub. L. No. 103-454, tit. II, 108 Stat 4791, 4792-93 (1994) (codified at 25 U.S.C. 1212-1215)

§ 201. Short Title.

This title may be cited as the "Tlingit and Haida Status Clarification Act".

§ 202. Findings.

The Congress finds and declares that—

(1) the United States has acknowledged the Central Council of Tlingit and Haida Indian Tribes of Alaska pursuant to the Act of June 19, 1935 (49 Stat. 388, as amended, commonly referred to as the "Jurisdiction Act"), as a federally recognized Indian tribe;

(2) on October 21, 1993, the Secretary of the Interior published a list of federally recognized Indian tribes pursuant to part 83 of title 25 of the Code of Federal Regulations which omitted the Central Council of Tlingit and Haida Indian Tribes of Alaska;

(3) the Secretary does not have the authority to terminate the federally recognized status of an Indian tribe as determined by Congress;

(4) the Secretary may not administratively diminish the privileges and immunities of federally recognized Indian tribes without the consent of Congress; and

(5) the Central Council of Tlingit and Haida Indian Tribes of Alaska continues to be a federally recognized Indian tribe.

§ 203. Reaffirmation of Tribal Status.

The Congress reaffirms and acknowledges that the Central Council of Tlingit and Haida Indian Tribes of Alaska is a federally recognized Indian tribe.

§ 204. Disclaimer.

(a) IN GENERAL.—Nothing in this title shall be interpreted to diminish or interfere with the government-to-government relationship between the United States and other federally recognized Alaska Native tribes, nor to vest any power, authority, or jurisdiction in the Central Council of Tlingit and Haida Indian Tribes of Alaska over other federally recognized Alaska Native tribes.

. . .

25 U.S.C. § 1305. Tribal jurisdiction in Alaska

(a) In general

Subject to title II of Public Law 90-284 (25 U.S.C. 1301 et seq.) (commonly known as the "Indian Civil Rights Act of 1968"), Congress recognizes and affirms the inherent authority of any Indian tribe occupying a Village in the State to exercise criminal and civil jurisdiction over all Indians present in the Village.

(b) Tribal civil jurisdiction to enforce protection orders

(1) In general

A court of any Indian tribe in the State shall have full civil jurisdiction to issue and enforce protection orders involving any person in matters--

(A) arising within the Village of the Indian tribe; or

(B) otherwise within the authority of the Indian tribe.

(2) Inclusions

The full civil jurisdiction to issue and enforce protection orders under paragraph (1) includes the authority to enforce protection orders through--

(A) civil contempt proceedings;

(B) exclusion of violators from the Village of the Indian tribe; and

(C) other appropriate mechanisms.

(c) Special Tribal criminal jurisdiction

(1) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed under subsection (a), the powers of self-government of a participating Tribe include the inherent power of the participating Tribe, which is hereby recognized and affirmed, to exercise special Tribal criminal jurisdiction over a defendant for a covered crime that occurs in the Village of the participating Tribe.

(2) Concurrent jurisdiction

The exercise of special Tribal criminal jurisdiction by a participating Tribe shall be concurrent with the jurisdiction of the United States, the State, or both.

(3) Exception if victim and defendant are both non-Indians

(A) In general

A participating Tribe may not exercise special Tribal criminal jurisdiction over an alleged offense of a covered crime, other than obstruction of justice or assault of Tribal justice personnel, if neither the defendant nor the alleged victim is an Indian.

(B) Definition of victim

In this paragraph and with respect to a criminal proceeding in which a participating Tribe exercises special Tribal criminal jurisdiction based on a violation of a protection order, the term "victim" means a person specifically protected by the protection order that the defendant allegedly violated.

(d) Pilot program for special Tribal criminal jurisdiction over persons who are not Indians

(1) Establishment

Subject to title II of Public Law 90-284 (25 U.S.C. 1301 et seq.) (commonly known as the "Indian Civil Rights Act of 1968"), there is established a pilot program under which the Attorney General, subject to paragraph (5), shall designate not more than 5 Indian tribes per calendar year as participating Tribes to exercise the special Tribal criminal jurisdiction described in paragraph (6) over all persons present in the Village of the Indian tribe.

(2) Procedure

At any time during the 1-year period beginning on March 15, 2022, and annually thereafter, an Indian tribe may request the Attorney General to designate the Indian tribe as a participating Tribe under paragraph (1).

. . .

Statutory Notes and Related Subsidiaries

FINDINGS; PURPOSES

Pub. L. 117–103, div. W, title VIII, §811, Mar. 15, 2022, 136 Stat. 904, provided that:

"(a) FINDINGS.—Congress finds that—

(1) according to the report of the Indian Law and Order Commission established by section 15 of the Indian Law Enforcement Reform Act (25 U.S.C. 2812), Alaska Native women—

(A) are overrepresented in the domestic violence victim population by 250 percent;

(B) in the State of Alaska, comprise—

(i) 19 percent of the population of the State; but

(ii) 47 percent of reported rape victims in the State; and

(C) as compared to the populations of other Indian Tribes, suffer the highest rates of domestic and sexual violence;

. . .

(4) the unique legal relationship of the United States to Indian Tribes creates a Federal trust responsibility to assist Tribal governments in safeguarding the lives of Indian women."

25 U.S.C. § 2703. Definitions [Indian Gaming Regulatory Act]

For purposes of this chapter--

. . .

(4) The term "Indian lands" means--

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which--

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

. . .

(7)(A) The term "class II gaming" means--

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)--

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that--

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

. . .