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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PECHANGA BAND OF INDIANS,

Plaintiff,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

No. 5:25-cv-03605-JGB-SP

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [DKT. 67]

Supplemental Declaration of Wesley Simmons (Dkt. 74) and Separate Statement of Disputed Facts filed concurrently herewith

Hearing Date: June 22, 2026
Hearing Time: 9:00 a.m.
Ctrm: 1, Riverside

Honorable Jesus G. Bernal
United States District Judge

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I. INTRODUCTION

Defendants oppose Plaintiff Pechanga Band of Indians' ("Plaintiff," "Pechanga," or the "Tribe") motion for summary judgement (the "Motion"). Dkt. 67.

The Tribe brings its Motion seeking an order and judgment compelling the Federal Government to enter a unilateral contract pursuant to the Indian Self-Determination and Education Assistance Act ("ISDEAA"). As previously explained during the preliminary injunction phase, the Indian Health Service ("IHS"), an agency within the United States Department of Health and Human Services, is not authorized to administer health care programs for non-Indians, yet the Tribe seeks an ISDEAA compact and funding agreement (collectively, a "compact") for an opioid treatment program ("OTP") to serve the general public. The ISDEAA only authorizes IHS to enter in contracts, under ISDEAA's Title I, and compacts, under ISDEAA's Title V, for federal programs that the IHS would otherwise carry out under its statutory authorities for American Indians and Alaska Natives (AI/AN). Despite prolonged contract negotiations, the IHS and the Tribe were unable to reach agreement on material terms, including the scope of federal programs for AI/AN authorized by the Snyder Act and the Indian Health Care Improvement Act and available for assumption by the Tribe under the ISDEAA.

On July 3, 2025, the IHS rejected Pechanga's final offer requesting the IHS award the OTP proposal. Now, the Tribe seeks to force the IHS into a unilateral ISDEAA contract based on their *preferred* terms, as an end-run around the limitations of the IHS's authority. Clear and convincing evidence stemming of the Supplemental Declaration of Wesley Simmons (Dkt. 74) and the rejection letter (Dkt. 74-51 through 74-58) confirm that the IHS had valid justifications in rejecting Pechanga's final offer. The IHS determined that Pechanga's OTP proposal and final offer were an effort by Pechanga and OneTogether Solutions, a third-party organization, to establish a commercial health care enterprise for the primary benefit of the public, *not* for the primary or significant benefit of AI/ANs. The Tribe's commercial provision of OTP services to the public is not relevant

to the IHS, nor is it governed by the ISDEAA. Yet, the Tribe's facility sits closed at its option. Dkt. 58, p. 2.

As explained below, the Court should deny the Tribe's Motion. If the Court enters judgment in favor of the Tribe, the appropriate remedy pursuant to the ISDEAA is to vacate the rejection and remand to the IHS for limited negotiations.

II. DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Statutory and Regulatory Framework

Defendants generally incorporate by reference the statutory and regulatory framework of the ISDEAA and the IHCIA, as previously explained in the Defendants' Opposition to Pechanga's Preliminary Injunction. *See* Dkt. 59. In summary, tribes that participate in the ISDEAA Title V Self-Governance program, established under 25 U.S.C. § 5382, including Pechanga, must negotiate and enter into a written agreement with the IHS that identifies the federal programs to be performed and sets forth various terms related to each program, including the amount of funds to be provided. 25 U.S.C. § 5385.

B. ISDEAA Funding Negotiations Between Pechanga and the IHS

The Riverside San Bernardino County Indian Health, Inc. is a consortium of several Tribes (the "Riverside Consortium") authorized by 25 U.S.C. § 5381(b) to compact with the government to administer IHS programs.[1] DSUF 1.

Under the terms of an ISDEAA compact since 2004, the Riverside Consortium administers IHS programs to AI/AN in Riverside and San Bernardino Counties, California. DSUF 2. The Riverside Consortium administers alcohol and substance abuse, mental health and the purchased/referred care ("PRC") programs on behalf of its member tribes, including Pechanga, and other AI/AN. DSUF 3.

Pechanga is a federally recognized Tribe with a reservation located in Temecula, California. DSUF 4. Pechanga contracts under the ISDEAA with other federal agencies but they do not have an ISDEAA contract or compact with the IHS. DSUF 5.

[1] References to "DSUF" are to the concurrently filed Defendants' Statement of Genuine Disputes of Material Fact ("Statement of Genuine Disputes").

Pursuant to Pechanga Tribal Resolution 2004-0615, Pechanga authorized the Riverside Consortium to administer IHS programs on its behalf under the terms of the IHS compact with the Riverside Consortium. DSUF 6.

On or about August 2022, OneTogether Solutions gave Pechanga representatives a "Presentation to Discuss Opioid Treatment Programs" explaining the establishment of an OTP and which also modeled financial revenue from billing at the All-Inclusive Rate (AIR), which is the flat, per-visit payment rate established to reimburse health care providers for medical and preventatives services provided to eligible AI/AN. DSUF 7.

On or about August 11, 2023, Pechanga initiated ISDEAA negotiations by letter to the IHS. DSUF 8. The letter stated the Tribe wished to partially withdraw from the Riverside Consortium for the purpose of establishing and operating new opioid treatment and wellness centers. DSUF 9.

Between September 1, 2023 and January 4, 2024, the parties met and corresponded about Pechanga's proposal, but Pechanga did not provide material information such as when they intended to withdraw from the Riverside Consortium or open their OTP clinic. DSUF 10.

The IHS received Pechanga's draft compact and funding agreement on March 7, 2024. DSUF 11. Specifically, the draft stated, the "Tribe will operate a clinic to provide addiction services and treatment to members of the Tribe as well as other Native Americans, *and to non-Native patients including those served by Medicaid. ...*" March 7, 2024 draft funding agreement, at 1-2 (emphasis added). DSUF 12. Section 5(a) of the draft stated that "The Tribe is authorized to provide health services to ineligible persons and to charge Indians and non-Indians for services in accordance with applicable federal law including 25 U.S.C. § 1680r(a) and 25 U.S.C. § 1680c." DSUF 13.

Thereafter, Pechanga identified the proposed program facility location in Perris, California. DSUF 14. During these negotiations, the IHS asked about facility location and operation information, the funds Pechanga sought to redirect from Riverside Consortium to Pechanga, and when Pechanga intended to begin providing services.

DSUF 15.

On April 5, 2024, the IHS provided technical assistance to Pechanga regarding their proposal to partially withdrawal from the Riverside Consortium. DSUF 30. IHS also asked for clarification on Pechanga's decision under 25 U.S.C. § 1680c to provide medical services to non-beneficiaries (generally, individuals who are not AI/AN or otherwise eligible for IHS services). DSUF 16.

On April 23, 2024, Pechanga enacted Executive Order No. 240428-1.1.B purporting to "authorize[] serving non-Indians/ineligible persons at the Clinic … pursuant to Section 813(c) of the IHCIA, 25 U.S.C. § 1680c(c)." DSUF 17.

On May 23, 2024, IHS wrote to Pechanga about their concerns with the draft agreement. DSUF 18. These concerns related to funding and draft language in the compact section 5 and funding agreement at section 4 and language reflecting a service delivery area beyond Riverside County and San Bernardino County, as it did not appear to have the support of Riverside Consortium or other tribes in the area. DSUF 19. Pechanga informed the IHS they intended to provide services as of February 1, 2025. DSUF 20.

On August 14, 2024, Pechanga sent Pechanga Executive Order No. 240815-1.1.D relating to Pechanga's partial withdrawal from the Riverside Consortium. DSUF 38. On August 15, 2024, the parties met and Pechanga sent IHS revised drafts of the proposed compact and funding agreement. DSUF 21. Pechanga requested draft compact language that would allow Pechanga to provide services to the general public throughout the State of California or, alternatively, in San Bernardino County, Riverside County, and all contiguous counties. DSUF 22. Pechanga Executive Order #240815-1.1.D purported to authorize Pechanga's withdrawal of a "portion of" its PSFAs from the Riverside Consortium and redirect 2.5% of Pechanga's Secretarial funding from the Riverside Consortium's ISDEAA compact to fund Pechanga's administration of the proposed OTP under Pechanga's own ISDEAA compact. DSUF 23. For the first time, Pechanga mentioned that they were subcontracting with OneTogether Solutions for the

administration of the proposed OTP. DSUF 24. OneTogether Solutions LLC is a private third-party healthcare provider that develops, manages, and operates opioid-treatment clinics serving the Medicaid-eligible public. DSUF 25.

On September 12, 2024, the IHS rejected language proposed by Pechanga to administer an OTP beyond the Riverside Consortium's service delivery area. DSUF 43. IHS noted if Pechanga wanted to expand that service delivery area, IHS would need input from other tribes located within that specified geographic area. DSUF 26; *see* 25 C.F.R. § 900.8(d)(1). The IHS provided financial information identifying 2.5% of Pechanga's annual Secretarial funding and followed up by providing redlines to the drafts. DSUF 27.

On October 16, 2024, the IHS requested Pechanga provide additional information, including financial information and a copy of its contract with OneTogether Solutions. DSUF 28.

On November 13, 2024, the IHS informed Pechanga that the IHS would need to review Pechanga's contract with OneTogether Solutions before any further discussions could be had about the proposed ISDEAA agreement. DSUF 29.

On November 19, 2024, Pechanga provided a redacted copy of the "Full-Service Facility and Management Services Agreement" ("MSA") between Pechanga and OneTogether Solutions. DSUF 30. After being requested by the IHS, on December 5, 2024, Pechanga provided an unredacted copy of the MSA. DSUF 31.

On December 27, 2025, the IHS informed Pechanga that their proposal did not appear to reflect a tribally administered program as required by the ISDEAA because Pechanga's proposal reflected OneTogether Solutions would be administering the entire program and benefiting from Pechanga's ability to bill at the "All Inclusive Rate." DSUF 32. In addition, the IHS informed Pechanga that their intended service population was not clear in that the program did not appear to be a program for Indians. DSUF 33. The IHS requested information about the number of IHS beneficiaries versus non-IHS beneficiaries Pechanga intended to serve. DSUF 34.

On January 2, 2025, the IHS emailed Pechanga about the IHS's concerns with the proposal, including "(1) the ISDEAA requires that the proposed OTP be conducted and administered by the Tribe (2) the proposed OTP must be operated by the Tribe to receive 100% FMAP and 340B Program Benefits, (3) non-compliance with the ISDEAA's Indian Preference requirements, and (4) the program Pechanga proposed to withdraw from Riverside Consortium and authorize OneTogether Solutions to administer on its behalf was not a program for Indians because of their status as Indians as required by the ISDEAA." DSUF 35.

On January 7, 2025, Pechanga provided the ownership information of OneTogether Solutions and provided a written response to IHS's concerns. DSUF 36.

On January 22, 2025, the IHS met with Pechanga to provide technical assistance and Pechanga appeared unwilling to administer the proposed program on its own behalf. DSUF 37.

In February 2025, the parties met to discuss the funding proposal. DSUF 38. Pechanga did not identify any aspect of the OTP that the Tribe intended to administer on its own, such as financing, billing, or operationally managing the treatment services. DSUF 39.

On March 7, 2025, IHS emailed Pechanga and explained the agency's concerns, including that the MSA's inconsistent use of the term "assisting" Pechanga in the MSA reflected that OneTogether Solutions, rather than Pechanga, was to be "sole and exclusive provider" of OTP services. DSUF 40. Pechanga did not identify any path towards eventually administering the proposed OTP services itself. DSUF 41.

On March 18, 2025, Pechanga wrote to IHS, proposed additional redlines to the MSA, and provided "responsive information" including four OTS presentations (one undated, the others dated April 2022, January 10, 2024, and October 3, 2024), and market research information, all of which appeared to have been developed by OneTogether Solutions for Pechanga. The market research information noted the "clinic would be open to all adults (native and non-native)." DSUF 42.

On April 4, 2025, Pechanga sent an email to the IHS explaining that Riverside and San Bernardino County AI/AN demographics reflected that a total of 984 tribal members lived in the counties around Riverside and San Bernardino Counties and that the communities to be served were 2% or less AI/AN. The email it included a statement from Riverside Chief Executive Officer that reflected the OTP would primarily service the public rather than Indians. DSUF 43.

On May 10, 2025, Pechanga submitted its "Final Offer" describing its proposal as an effort to "establish a much-needed opioid treatment clinic (the "Clinic") through a Title V Compact and Funding Agreement with the IHS to serve its members, other Riverside Consortium patients, *and others* in need of opioid treatment" (Emphasis added). DSUF 44.

On July 2, 2025, the IHS received correspondence from Pechanga stating the IHS "offered no clear path forward for a program receiving contracted assistance through Pechanga's choice of outside vendors, OTS, other than to replace them with RSBCIHI." DSUF 45. Pechanga also attached a letter from Riverside Consortium expressing support for Pechanga's OTP. *Id.*

On July 3, 2025, the IHS issued a letter explaining its partial rejection decision regarding Pechanga's Final Offer and the funding for the OTP pursuant to 25 U.S.C. § 5387(c)(1)(A)(i-ii). DSUF 46. The IHS accepted Pechanga's proposal to assume a portion of the IHS Purchased/Referred Care (PRC) program, the IHS program providing specialty medical care not provided by the IHS or a tribal health care facility. *Id.*

On August 13, 2025, the IHS met with Pechanga to provide technical assistance. DSUF 47. The IHS reiterated its technical assistance recommendation that Pechanga provide an OTP through (or in partnership with) Riverside Consortium under Riverside Consortium's ISDEAA compact. DSUF 48.

In accordance with the terms of Riverside Consortium's compact and funding agreement, the IHS paid Riverside Consortium for the provision of health care programs to Pechanga tribal members through January 31, 2027. DSUF 49.

If the IHS is compelled by court order to enter an ISDEAA compact and funding agreement with Pechanga with an effective date prior to February 1, 2027 for Pechanga's proposed OTP, the IHS would be forced into duplicative ISDEAA contracts – one with the Riverside Consortium and the other with Pechanga – both for federal opioid treatment services for Pechanga tribal members. DSUF 50. In addition, the ISDEAA contract with Pechanga would be unlawful, because the IHS lacks authority to enter into contracts under the ISDEAA for programs the IHS is not authorized by Congress to administer.

III. LEGAL STANDARD FOR REVIEW OF ISDEAA DECISIONS

Generally, summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial burden of establishing that there is no genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). To defeat a motion for summary judgment, the responding party must present admissible evidence sufficient to establish the existence of any elements that are essential to that party's case and for which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322; *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). The evidence presented by both sides is to be viewed in the light most favorable to the nonmoving party. *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1155 (9th Cir. 2010). In this case, the evidence of the IHS's compact negotiations and the rejection decision should be viewed in the light most favorable to the Federal Government. And the Court "may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000) (citation modified) (emphasis added).

The ISDEAA does not identify any applicable standard of review. Both the Supreme Court and the District of Columbia Court of Appeals have declared that if a statute does not provide a standard of review, as is true of the ISDEAA, courts must look to the standard under the Administrative Procedure Act ("APA"). *See United States v. Carlo Bianchi &*

Co., 373 U.S. 709, 715 (1963) ("Indeed, in cases where Congress has simply provided for review, without setting forth the standards to be used or the procedures to be followed, this Court has held that consideration is to be confined to the administrative record and that no de novo proceeding may be held."); *Al–Fayed v. CIA*, 254 F.3d 300, 304 (D.C. Cir. 2001) (noting that APA "provides a default standard of judicial review ... where a statute does not otherwise provide a standard") (quoting *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1404 n. 12 (D.C.Cir. 1995)). This Court and the Ninth Circuit have not clearly interpreted a standard of review for the ISDEAA under the context of decisions from the IHS, which Pechanga appears to concede. Dkt. 67 at 12.

District courts are divided on the appropriate standard of review. *See Rancheria v. Hargan*, 296 F. Supp. 3d 256, 264 (D.D.C. 2017). To be clear, district courts can properly review legal questions and apply the "arbitrary and capricious" standard of the APA to an ISDEAA claim. *See e.g., Citizen Potawatomi Nation v. Salazar*, 624 F. Supp. 2d 103, 108 (D.D.C. 2009) (citing *Carlo Bianchi & Co.*, 373 U.S. at 715); *Los Coyotes Band of Cahuilla & Cupeno Indians v. Salazar*, 2011 WL 5118733, at *3 (S.D. Cal. Oct. 28, 2011), *rev'd in part sub nom. Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, 729 F.3d 1025 (9th Cir. 2013).

District courts can review *de novo* questions of legal interpretation under the ISDEAA. *See, e.g.*, *Chickasaw Nation v. United States*, 534 U.S. 84, 93-94 (2001); *Jamestown S'Klallam Tribe v. Azar*, 486 F. Supp. 3d 83, 87 (D.D.C. 2020); *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 542 (D.D.C. 2014). The Act provides that each provision of the statute or compact "agreement shall be liberally construed for the benefit of the Indian tribe[,] ... and *any ambiguity* shall be resolved in favor of the Indian tribe." 25 U.S.C. § 5392(f) (emphasis added); *see* 25 C.F.R. § 900.3(b)(11) (agency regulations providing the same). Those provisions codify the "Indian law canon of statutory construction" that generally applies to ambiguities in statutes affecting AI/AN. *Pyramid Lake Paiute Tribe*, 70 F. Supp. 3d at 541-42; *see Chickasaw Nation*, 534 U.S. at 93-94.

That canon must be given its due, but—like other canons—it "need not be conclusive," and "other circumstances evidencing congressional intent can overcome [its] force." *Chickasaw Nation*, 534 U.S. at 94 (quotation omitted); *see also South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 & n.16 (1986) (citing cases); *King Mt. Tobacco Co. v. McKenna*, 768 F.3d 989, 993 (9th Cir. 2014) ("But 'even though legal ambiguities are resolved to the benefit of the Indians, courts cannot ignore plain language that, viewed in historical context and given a fair appraisal, clearly runs counter to a tribe's later claims.'") (citation omitted).

The ISDEAA provides that the agency "shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting" a tribe's final offer regarding a Title V compact proposal. 25 U.S.C. § 5387(d). In reviewing an ISDEAA decision, district courts should consider evidence broader than just the administrative record of simply the final offer and the IHS's decision letter. *See Fort McDermitt Paiute & Shoshone Tribe v. Price*, 2018 WL 4637009, at *2 (D.D.C. Sept. 27, 2018) ("The problem lies in the fact that the parties have presented the Court with nothing more than a bare 'administrative record' with no supporting testimony. The record consists largely of correspondence between the Tribe and IHS, along with financial spreadsheets and similar documents. See [Administrative Record]. It is notably devoid of affidavits or testimony that explain what the numbers in these documents mean."). As such, this Court can and should consider the entire agency's decision-making process as explained in detail by the supplemental declaration of Wesley Simmons (Dkt. 76).

IV. ARGUMENT

A. Proposals for Health Care Programs for the General Public Are Beyond the IHS Authority to Award under the ISDEAA.

1. The IHS may contract under the ISDEAA only for federal programs for AI/AN that the IHS is authorized to administer under particular statutes.

The determination of whether a program is eligible for assumption under the

ISDEAA is an inherently federal function the IHS carries out pursuant to the authority given to it by Congress. Yet, Pechanga simultaneously attempts to force IHS into the Final Offer review process and to divest the IHS of its own inherent decision-making authority. The IHS does not administer health care programs for the general public. Instead, the ISDEAA establishes the scope of federal programs eligible for assumption under Title V. 25 U.S.C. § 5385(b). Specifically, 25 U.S.C. § 5385(b)(1) requires that a funding agreement identify:

> [A]ll programs, services, functions, and activities (or portions thereof), *that are carried out for the benefit of Indians because of their status as Indians* without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed.

(Emphasis added). (In its Order, the court misuses the ISDEAA term of art "or portion thereof" (Order throughout, incl. at page 8, paragraph 2 and page 9, paragraph 3). The phrase "or portion thereof" relates to the phrase "programs, services, functions, and activities (or portion thereof)," not to the requirement that PFSAs be carried out for the benefit of Indians. As evidence, Title V uses the term "programs, services, functions, and activities (or portions thereof)" 19 times in provisions that do not relate to the threshold requirement that PSFAs be carried out for the benefit of Indians or that Indians must be the primary or significant beneficiaries of the program.) This language is clear that the ISDEAA only relates to federal programs are carried out for the benefit of AI/AN because of their status as AI/AN. This point is further emphasized in 25 U.S.C. § 5385(b)(2), which states in pertinent part:

> Such programs, services, functions, or activities (or portions thereof) include all programs, services, functions, activities (or portions thereof) ... *with respect to which Indian tribes or Indians are primary or significant beneficiaries ….*

(Emphasis added). The IHS lacks the authority to enter ISDEAA agreements for purposes beyond the programs for AI/AN specifically authorized by 25 U.S.C. § 5385(b). Agreeing to award a proposal for any program designed to serve the general public and provide, at best, a collateral or *de minimis* benefit to Indians exceeds the authority granted to the agency in the ISDEAA and would impermissibly expand significant ISDEAA benefits (e.g., FTCA coverage) beyond what Congress has authorized.

Courts have upheld declinations and rejections of certain program proposals under the ISDEAA because the programs were not "for the benefit of Indians because of their status as Indians." *See Navajo Nation v. Dept. of Health & Human Services*, 325 F.3d 1133, 1138 (9th Cir. 2003) (holding the federal Temporary Assistance for Needy Families Program is not contractible under the ISDEAA because it is not a program "for the benefit of Indians because of their status as Indians"); *see also Hoopa Valley Indian Tribe v. Ryan*, 415 F.3d 986, 991 (9th Cir. 2005) (holding a federal fishery restoration project was not a program for "Indians based on their status as Indians" because it was "intended to benefit a wide range of interests and only collaterally benefited Indians..."); *Mashantucket Pequot Tribal Nation v. Indian Health Services* ("*Pequot*"), DAB 2028 (2006) (H.H.S.), 2006 WL 1337439, (May 3, 2006). These cases held that a collateral benefit to AI/AN is insufficient to make the federal program a program for AI/AN and upheld the agency's decisions.

Here, Pechanga concedes its intended program would serve a vast majority of non-Indians. DSUF 42 (Dkt. 74 ¶ 60; Dkt. 74-4 at pg. 7-9, 14, 21, 26-28; Dkt. 74-45 at p. 5-13) Not surprisingly, then, Pechanga's motion does not acknowledge the ISDEAA's threshold requirement; the words "primary or significant beneficiaries" are not found in Pechanga's brief. Instead, Pechanga would prefer the court to skip the analysis presented by ISDEAA's § 5385(b)(2) and divert the court's attention to its isolated reading of the IHCIA's § 1680c.

However, the proportion of AI/AN to non-AI/AN to be served by a proposed

program is material to the determination of whether the program is contractable under the ISDEAA. *Id*.

In *Mashantucket Pequot Tribal Nation*, the HHS Departmental Appeals Board (DAB or Board) addressed whether the Pequot Nation's proposal for pharmacy services involved services that were properly the subject of an ISDEAA contract. *Mashantucket Pequot Tribal Nation*, 2006 WL 1337439, at *5-6. DAB decisions result from an administrative adjudication under which the Secretary must provide the Tribe with a "hearing on the record." 25 U.S.C. § 5321(b)(3). Such hearings are conducted in accordance with the Administrative Procedure Act. *See, e.g.*, 25 C.F.R. 900.164(i). The DAB is responsible for issuing the final agency decision for HHS under 25 U.S.C. § 5321(e).

At issue before the DAB was a tribe's proposal to extend pharmacy services under its ISDEAA agreement to all beneficiaries of its health plans, including its non-Indian employees. The beneficiaries of its health plan included "approximately 1000 Indians and 23,000 non-Indians"—approximately only 4.4% of the pharmacy service population were to be IHS beneficiaries. *Pequot*, at 4.

The DAB found in *Mashantucket Pequot Tribal Nation* that the proposed pharmacy services program was not a program for the benefit of AI/AN because the services covered "thousands of non-Indians who are ineligible for IHS health services." In reaching its decision, the Board relied on both 25 U.S.C. § 5321(a)(E) of the ISDEAA (requiring contractable programs to be "for the benefit of Indians because of their status as Indians") and 25 U.S.C. § 1680c(c) of the IHCIA ("The fact that the IHCIA is a statute that IHS is authorized to administer for the benefit of Indians does not make the services proposed by the Nation contractible because these services are not authorized by the IHCIA. Instead, the services cover thousands of non-Indians who are ineligible for IHS health services…" *Pequot*, at 8.).

In *Pequot*, circumstances demonstrated "the services for non-Indian employees included in the proposed AFAs are not properly the subject of a program which the

Secretary is authorized to administer for the benefit of Indians," including that "the principle reason for including the non-Indian employees under the contract is to enable the Nation to provide the employees with a fringe benefit at a discounted cost to the Nation through the use of the FSS …". *Id.* at 11. In addition, the DAB found that "even if there were some health care benefit to the tribal members from the inclusion of pharmacy services to non-Indian employees under the [ISDEAA] contract, it is vastly outweighed by the benefit to the non-Indian employees since the number of tribal members is very small compared to the number of non-Indian employees." *Id.* at 11. In 2010, Congress amended 25 U.S.C. § 1680c(c) of the IHCIA to eliminate the condition that no reasonable alternative services exist to serve ineligible non-Indians.

But Congress did not disturb HHS's interpretation of the ISDEAA as explained in *Pequot*. If Congress had wanted to alter the ISDEAA requirement that a program benefit AI/AN, it would have amended the ISDEAA to do so; instead, Congress left that requirement, and by extension the Agency's interpretation of that requirement, in place.

Here, Pechanga attempts to access federal financial incentives meant for services provided to IHS beneficiaries for services it intends to provide to non-Indians at a discounted cost to itself (not the public). DSUF 42 (Dkt. 74 ¶ 60; Dkt. 74-4 at pg. 7-9, 14, 21, 26-28; Dkt. 74-45 at p. 5-13) The health care benefit to Pechanga tribal members from the provision of OTP services to non-Indian employees under the ISDEAA contract would vastly outweighed by the benefit to the non-Indians, since the number of tribal members is very small compared to the number of non-Indians. *See* DSUF 46.

Because Pechanga's proposal is outside the ambit of the IHS programs the tribes can assume under the ISDEAA, the "rejection" criteria in 25 U.S.C. § 5387(c) are not applicable. As long as IHS timely responds to identify any deficiencies in the letter, the IHS is not required to rely on the ISDEAA's rejection criteria and adhere to the final offer process in any case where a tribe submits a letter titled "final offer" without otherwise meeting the ISDEAA's threshold requirements. *See, e.g., Osage Nation v. Dep't of Interior*, 800 F. Supp. 3d 70 (2025).

B. Alternatively, the IHS Properly Rejected the Final Offer Pursuant to 25 U.S.C. § 5387(c)(1)(A)(i-ii).

Under the ISDEAA, a tribe cannot receive more funding than that to which the tribe is entitled. *See* 25 U.S.C. § 5387(c)(l)(A)(i); 42 C.F.R. § 137.140(a). Funding is inherently tied to the PSFAs (or portion thereof) assumed by a tribe and funded through a tribe's funding agreement. The Supreme Court has affirmed that funding includes not only the amount awarded directly by IHS, but also third-party funding that supports the Federal program. *See Becerra v. San Carlos Apache Tribe*, 602 U.S. 222 (2024) (finding "IHS must use the third-party collections to provide healthcare services. … So IHS's Federal program comprises congressionally funded and third-party funded healthcare. When that program is transferred to the tribe from IHS, the tribe … becomes the entity collecting program income and spending it on the Federal program. The tribe's resultant direct contract support costs are incurred "for the operation of *the Federal program* that is the subject of the contract.").

Although the Tribe explicitly states in its motion that it is not requesting any additional funding from the IHS, there would be no need for the Tribe to make a Final Offer if it did not seek some sort of benefit. As this Court has pointed out "[i]t is hard to take seriously that this sum of money is the difference between opening the clinic and not opening the clinic. Instead, it would appear that the real value to Pechanga lies in the non-funding benefits of a Title V compact, including the ability to bill at the all-inclusive rate and protections under the FTCA. These benefits are certainly very valuable..." Order at 11.

Accordingly, the "applicable funding level for the contract" includes not only the funding directly awarded by IHS, but also Medicare, Medicaid and other third-party payers. And so the Title V rejection criteria at 25 U.S.C. § 5387(c)(1)(A)(i) apply to rejections of final offers related to these benefits under the ISDEAA as well. Giving effect to that, 42 C.F.R. § 137.143 requires "The Secretary must provide funds under a funding agreement in an amount equal to the amount that the Indian Tribe would have

been entitled to receive under self-determination contracts under this Act, including amounts for direct program costs … and amounts for contract support costs …, including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian Tribe or its members…."

What is more, the government cannot enter into a contract for illegal purposes or for inherently federal functions. *See* 25 U.S.C. § 5310 (regarding investment of advance payments to Tribes); 5 U.S.C. § 5385(d) (setting out mandatory terms for funding agreements); 25 U.S.C. § 5387(a)(1) (requiring a mandatory provision regarding health status reporting); 25 U.S.C. § 10 § 5387(a)(2)(A) (requiring a provision authorizing the Secretary to reassume operation of a PFSA (or portion thereof). Doing so would impermissibly expand Congress' limited waiver of sovereign immunity in the Federal Tort Claims Act. Accordingly, Pechanga cannot expand the IHS's statutory authority by tribal resolution (as that circumvents federal preemption), Final Offer review procedures, or litigation.

Because the determination of what PSFAs (or portion thereof) the IHS is authorized to perform, and therefore include in the scope of work of an ISDEAA agreement, is an inherent Federal function[2], the IHS properly rejected Pechanga's proposal under 25 U.S.C. § 5387(c)(l)(A)(ii). In its denial letter, the IHS explained that, pursuant to 25 U.S.C. § 5387(c)(1)(A)(i-ii), while Pechanga has the authority to withdraw its funding and PSFAs from the Riverside Consortium to contract with the IHS for the benefit of Pechanga's own members under 25 U.S.C. § 5386(g), Pechanga does *not* have the right to enter into a compact with the IHS for the benefit of members of other tribes or unaffiliated Indians in Riverside County, where the IHS has already entered into an ISDEAA contract with another Tribal program to provide those services.

[2] Defendants contend it is important that the IHS maintains its plenary authority over decision making related to contracting, that inherently federal functions are identified and defined in federal acquisition regulations. *See* 48 C.F.R. Part 7, Subpart 7.5. Whether a contracting decision is inherently federal is a decision reviewable by the U.S. Office of Management and Budget. *See* 48 C.F.R. § 7.503(b).

DSUF 46. Through many months of negotiations, the IHS raised these concerns with Pechanga. *See* DSUF 18-19, 35, 36, 40, 42. Congress "has imposed on the IHS a duty to not accept contracts where acceptance would dictate substantive revisions to existing contracts. The IHS is obligated by law to protect existing contracts." IHS Final Offer Response Letter at 6 (citing *Pit River Health Serv. Inc. v. Indian Health Services*, DAB CR333, at *13 (1994) (H.H.S.), 1994 WL 596859, at *13 (Sept. 12, 1994)). Here, the IHS properly carried out its duties not to accept a contract proposed where acceptance would violate the ISDEAA and concurrently dictate substantive revisions to the Riverside Consortium's compact.

Pechanga is only entitled to compact under the ISDEAA to assume a federal program for the provision of opioid treatment program services to its own members, yet Pechanga's proposal was much more than that; information disclosed by Pechanga reflect a plan to serve essentially anyone with Medicaid in Riverside, San Bernardino, or any contiguous county, and make it clear that access to the AIR, through an ISDEAA compact, was "key" to the financial success of that endeavor. DSUF 7.

In fact, however, if the proposal were awarded, the provision of OTP services to Pechanga tribal members would amount to an ancillary benefit. Based on the data that Pechanga provided to the IHS during negotiations, its members represent a small percentage of the population of Riverside County. DSUF 7, 43. Furthermore, the percentage of total eligible AI/ANs in the community Pechanga is seeking to serve would be 2% or less, meaning that if Pechanga opened an opioid treatment program, it would serve almost entirely non-beneficiaries. *See* DSUF 43.

Section 5385(b) establishes the limit, not the floor, of the IHS's authority. The IHS cannot enter ISDEAA agreements for purposes beyond those programs specifically authorized by 25 U.S.C. § 5385(b).

This Court can look at *Jamestown S'Klallam Tribe v. Azar*, 486 F. Supp. 3d 83 (D.D.C. 2020), where a district court explained that it is not reasonable to use an ISDEAA compact to underwrite the provision of services to non-Indians because tribes cannot

contract with the government under ISDEAA to perform such services *See id*. at 89–90.

As the IHS explained to Pechanga in its decision, it was required to reject Pechanga's Final Offer because it is not a program for the benefit of AI/AN because of their status as AI/AN, nor are tribes or AI/AN "the primary or significant beneficiaries." DSUF 42. Pechanga's proposed OPT was not designed "for the benefit of Indians because of their status as Indians." Numerous technical assistance meetings between Pechanga and the IHS consistently discussed Pechanga's intentions to operate the proposed opioid treatment program primarily for the general public. DSUF 37, 42, 46-48. The IHS determined through years long negotiations and investigations that Pechanga's proposed program was intended to be a commercial facility open to the public, not the assumption of a federal program in order to diminish federal domination and exercise self-governance over a program that benefits AI/AN because of their status as AI/AN. DSUF 42, 46.

1. <u>The IHCIA Does Not Expand IHS Authority to Award a Proposal for an OTP Program Serving the Public.</u>

The authority under 25 U.S.C. § 1680c(c)(2) to provide services to ineligible individuals, or non-beneficiaries, does not alter this analysis. Under that authority, an ISDEAA contractor may "determine whether health services should be provided under such contract or compact to individuals who are not [otherwise] eligible for such health services." *Id*. However, this authority is not boundless.

First, prior to providing services to ineligible individuals, a Tribe must determine whether the provision of services will result in a denial or diminution of health services to eligible Indians. *Id*. This requirement prioritizes care for AI/AN, the primary beneficiaries of IHS programs. Moreover, Congress also requires that payment be recouped from ineligible individuals in an amount not less than the actual cost of providing services. *See* 25 U.S.C. § 1680c(c)(3) ("[N]on-Indian patients may be extended health care at all tribally administered or [IHS] facilities, subject to charges ….”); *see also* Consolidated Appropriations Act, 2024, HR 4366, Pub. Law No. 118-42 (Mar. 9, 2024)). Clearly, Congress intended 25 U.S.C. § 1680c(c) to be limited and does

override the requirement that IHS only enter the ISDEAA contracts for PFSAs that are "for the benefit of Indians because of their status as Indians."

Furthermore, mere financial gain through a healthcare program does not constitute the program being a "Program for Indians" under the ISDEAA. *See Mashantucket Pequot, at* 19-20 (holding that the tribal savings and increased revenue associated with operating a pharmacy benefit for non-Indian employees of a tribe does not make the program eligible under the ISDEAA).

This limited authority to serve ineligible individuals must also be read in conjunction with other provisions of the ISDEAA. For example, the ISDEAA provides that unless Tribes participating in Self-Governance expressly agree, they are not "subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, *except for the eligibility provisions of section 5324(g)* …." 25 U.S.C. § 5397(e) (emphasis added). Section 5324(g) recognizes that when Tribes determine an individual's eligibility for assistance, benefits, and services provided under ISDEAA contracts, they must do so "in accordance with the terms of the contract and applicable rules and regulations of the appropriate Secretary …." 25 U.S.C. § 5324(g). The authority under 25 U.S.C. § 1680c(c)(2) to provide services to ineligible individuals is not an end run around these eligibility requirements[3] and cannot be used to redefine the scope of what it means to be an Indian Health Program.

As such, there is clear and convincing evidence that the IHS's rejection was proper under 25 U.S.C. § 5387(c)(1)(A)(i), and Pechanga's Motion should be denied for this

[3] Agency regulations establishing patient eligibility standards are published at 42 C.F.R. Part 136, Subparts B (direct care) and C (purchased/referred care). Under those rules, the IHS and Tribes may operate Indian Health Programs, which are health services programs "for Indians administered by the Indian Health Service within the Department of Health and Human Services." (emphasis added). Eligibility for Indian Health Programs begins with the core tenet that "[s]ervices will be made available, as medically indicated, to persons of Indian descent belonging to the Indian community served by the local facilities and program." 42 C.F.R. § 136.12(a)(1). The language of the regulation contemplates the "Indian community" as the basis for providing services, and not the general public.

reason.

C. At the Time of the Final Offer, the Proposed Funds Were Already Awarded to the Riverside Consortium Without Further Clarification from the Tribe

Pechanga is not seeking new funds from IHS to operate the OTP clinic. Rather, Pechanga is seeking unilateral redirection funds held by the Riverside Consortium at the agreement of the Tribe. When a tribe contracts with the IHS, it is contracting for its "share" of the total funding that supports the IHS program to be transferred. This is also known as the Secretarial amount awarded under 25 U.S.C. § 5325(a)(1). Although IHS consults with tribes before determining these "tribal shares" of the IHS program, the ultimate determination of the Secretarial amount rests with the Agency, since it represents the amount of funds that the Agency, in its discretion, chooses to spend to operate the program in question. See *Lincoln v. Vigil*, 508 U.S. 182, 194 (1993); *Pascua Yaqui Tribe of Ariz.*, DAB 1692 (H.H.S.), 1999 WL 985372, at * 9 (June 1, 1999). Once those funds are allocated, IHS is no longer able to provide funds for new programs on top of what IHS would have provided. 25 U.S.C. §5321(a)(1); *see also Los Coyotes Band of Cahuilla & Cupeno Indians*, 729 F.3d 1035-36; *Pasqua Yaqui Tribe of Ariz.*, 1999 WL 985372, at * 9. Furthermore, IHS is prohibited from unilaterally reducing funds from one tribe and providing it to another. 25 U.S.C. § 5325(b)(2); *see also Pit River Health Service, Inc.*, 1994 WL 596859, at *13.

A tribe can independently choose to enter into an agreement with a tribal organization or consortium to provide IHS services. 25 U.S.C. §§ 5304(l), 5381(b). In turn, IHS enters an ISDEAA agreement with the tribal organization or consortium and includes the tribe's shares in the other's funding agreement. *Id.* When a tribe wishes to administer federal programs on its own behalf, the ISDEAA withdrawal procedures apply. *See* 25 U.S.C. § 5386(g).

To withdraw from a consortium, such as the Riverside Consortium, Pechanga must enact tribal law authorizing withdrawal from the consortium and follow the IHS

procedural regulations to withdraw from the tribal consortium. 25 U.S.C. § 5386(g); 42 C.F.R. Part 137 Subpart K; 25 U.S.C. § 5321(a)(2)(E); 25 C.F.R. § 900.22(e).

Furthermore, because IHS cannot pay both a tribe and a tribal organization for the same scope of federal programs because of competing contractual obligations, both the tribal consortium and the tribe must amend their ISDEAA agreements to effectuate the tribe's withdrawal from the consortium. *See* 25 U.S.C. §§ 5321(a); 5386(g)(2); *see also*, *Los Coyotes Band of Cahuilla & Cupeno Indians*, 729 F.3d at 1028–29; *Pasqua Yaqui Tribe of Ariz.*, 1999 WL 985372, at * 9. Here, to effectuate Pechanga's partial withdrawal from the Riverside Consortium, the Riverside Consortium must also amend its compact with IHS.

IHS does not contest that Pechanga's withdrawing resolution meets the requirements IHS regulations. *See* Dkt. 67. However, IHS is unable to unilaterally amend the Riverside Consortium's compact or reduce the Riverside Consortium's funding in order to provide those funds to Pechanga. 25 U.S.C. § 5325(b)(2); *see also*, *Pit River Health Service, Inc.*, DAB CR333, at 19 (1994). To avoid the improper duplicate payment of tribal shares, both Pechanga and Riverside Consortium must amend their funding agreements to reflect Pechanga's withdrawal.

Riverside Consortium, *a non-party to this litigation,* has not yet provided IHS with a proposal to amend its compact to implement Pechanga's partial withdrawal. The Riverside Consortium did not directly communicate with IHS about Pechanga's OTP proposal until after the pendency of the instant litigation. Dkt. 60-3; Dkt. 60-4 (Declarations of Bill Thomsen and Dr. Mark LeBeau). In fact, the Riverside Consortium accepted payment from the IHS for substance abuse treatment services to Pechanga tribal members through Jan. 31, 2027. *Id*.

As such, even if the Court finds the OTP was an eligible program under the ISDEAA, the IHS would be unable to provide Pechanga with the requested funds until Riverside Consortium also amends its funding agreement. Therefore, Pechanga's Moton should be denied for this additional reason.

D. The Tribe Overstates the Scope of the Indian Canon of Construction in Mandating the Acceptance of their Final Offer

In their Motion, the Tribe overstates the scope of the Indian canon of construction to advance its interpretation of the statutory scheme where traditional tools of statutory interpretation cannot do so. *See, e.g.*, Dkt. 67, 12-13; *see also Red Lake Band of Chippewa Indians v. Dep't of Health & Hum. Servs.*, 718 F. Supp. 3d 50, 59 (D.D.C. 2024) (cleaned up)). The Tribe appears to assert that the Indian canon applies at the outset of the Court's interpretive inquiry, regardless of whether a statute is ambiguous. *See* Dkt. 67 at 12 (arguing that ISDEAA contains its own controlling rule of statutory construction, mandating that every provision of ISDEAA). But the Indian canon does not go that far.

The Indian canon should be considered only when a statute is *ambiguous*. *See* 25 U.S.C. § 5392(f) (requiring "any ambiguity" to be "resolved in favor of the Indian tribe" (emphasis added)); *see also N. Arapaho Tribe v. Becerra*, 61 F.4th 810, 814 (10th Cir.) ("[T]he canon applies only if the statute is ambiguous in the first place. As a logical matter, that must be so: If the text of a statute is unambiguous, there cannot be competing reasonable interpretations."), *aff'd sub nom. Becerra v. San Carlos Apache Tribe*, 602 U.S. 222 (2024). In other words, the Tribe cannot invoke the Indian canon to rewrite statutes, as the canon "does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress." *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986).

Rather, "[i]f the terms of a statute are clear and unambiguous, they are controlling absent rare and exceptional circumstances." *Ramah Navajo Chapter v. Salazar*, 644 F.3d 1054, 1062 (10th Cir. 2011) (recognizing that "[i]f a statute is ambiguous," the court looks to "traditional canons of statutory construction to inform our interpretation" and the Indian canon of construction" (emphasis added)), *aff'd*, 567 U.S. 182 (2012). And, when construing a statute, a court should rely on "bedrock principles of statutory interpretation," including that "the broader context of a statute as a whole may clarify the meaning of a

particular provision." *N. Arapaho Tribe*, 61 F.4th at 814 (cleaned up). As such, the law does not support the Tribe's strategy of invoking the ISDEAA's final offer rejection criteria or the Indian canon as a license in isolation to disregard Congressional intent. *Id.*

Plaintiff cites the decision regarding program income in *Navajo Health Foundation—Sage Memorial Hospital, Inc. v. Burwell*, 263 F. Supp. 3d 1083, 1164 (D.N.M. 2016) for support to leverage external sources of funding, including program income, to shift more direct IHS funding into the direct cost base for the purpose of assigning indirect costs. *See* Dkt. 67 at 31-32. The *Sage Memorial* court, however, improperly applied the Indian canon of construction, which applies only if a statute is ambiguous. *See, e.g., Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (noting that "statutes are to be construed liberally in favor of the Indians, with *ambiguous* provisions interpreted to their benefit" (emphasis added)); *see also Nation v. Dalley*, 896 F.3d 1196, 1208 (10th Cir. 2018) (finding that the Indian canon did not apply).

Applying those principles in this case—by examining the plain language of the statutes, combined with the statutory scheme as a whole and legislative history—reveals no ambiguity. Congress authorized IHS to provide opioid abuse services "for the benefit of Indians because of their status as Indians," not the non-Indian public Through years-long negotiations, the IHS confirmed that the proposed OPT was intended to be a commercial facility open to the public, beyond the scope of the IHS authority to administer and award to a tribe under the ISDEAA. DSUF 42, 44.

E. If Judgment is Entered for the Tribe, Then the Proper Remedy is Vacating the Rejection Letter and Remanding to the Agency for Limited Negotiations

Irrespective of the Court's decision in this case, Defendants maintain that the appropriate remedy is to vacate the IHS's rejection letter and remand back to the IHS for limited negotiations. The Final Offer should not be deemed approved should the Court find in favor of Plaintiff. Under the ISDEAA, this Court "may order appropriate relief including money damages, injunctive relief ... or mandamus to compel an officer or

employee of the United States, or any agency thereof, to perform a duty provided under this chapter or regulations promulgated hereunder[.]" 25 U.S.C. § 5331(a). Courts have broad discretion to fashion an appropriate remedy in equity. *See, e.g., Peyton v. DiMario*, 287 F.3d 1121, 1126 (D.C. Cir. 2002) ("A 'district court has wide discretion to award equitable relief.'" (quoting *Barbour v. Merrill*, 48 F.3d 1270, 1278 (D.C. Cir. 1995))).

Plaintiff claims that proper remedy under the ISDEAA is the award of the proposed compact and funding agreement as of the effective date of July 4, 2025. Dkt. 67 at 32. Plaintiff's reference to *St. Regis Mohawk Tribe v. U.S.*, 2026 WL 877117, at *13 (N.D.N.Y. Mar. 31, 2026) is misplaced because Pechanga is requesting prospective funding if it gets an ISDEAA compact, whereas the St. Regis Mohawk Tribe sought amendment to an existing Funding Agreement, and thus the Court determined further negotiations was unnecessary given it decided the limited legal issue. See *id.*, at *4. The Court should reject Plaintiff's vision of relief that mandates entry into the Tribe's compact on their preferred terms of the Final Offer. If the IHS is compelled by court order to enter into a compact and funding agreement with Pechanga prior to February 1, 2027 for the OTP, the source of the funds would unilaterally be required to be reduced from Riverside Consortium's funding agreement in order to avoid creating duplicative ISDEAA contracts with the Riverside Consortium and Pechanga for substance abuse services provided to Pechanga tribal members. DSUF 44, 49-50. The IHS has no ability to unilaterally take money from the Riverside Consortium pursuant to 25 U.S.C. § 5325(b)(2). *Id.*

As the evidence demonstrates, the parties can reach agreement by way of the served portion of the compact for PRC coordination services. DSUF 46. Thus, a well-recognized principle that courts should not make contracts for the parties, should lead the Court to remand back to the agency and negotiating for the OPT program taking into account for the funding period starting at February 1, 2027, plus negotiating the administrative and other federal benefits including but not limited to tort indemnity from

liability under the FTCA; access to discounted goods and services on FSS; the ability to receive limited cost outpatient drugs; the ability to collect reimbursement for services provided to the IHS beneficiaries and non-beneficiaries at the AIR; and the use of Federal personnel.

V. CONCLUSION

For the foregoing reasons, Defendants request that the Tribe's motion should be denied. If the Court enters judgment in favor of the Tribe, then the remedy is to vacate the IHS's rejection and remand to the IHS.

Dated: June 1, 2026

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Local Rule 11-6.2 Certificate of Compliance

The undersigned counsel of record certifies that this Opposition Brief contains 25 pages which complies with the page limit set by the Court's Standing Order (Dkt. 36).

Dated: June 1, 2026

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