No. 26-1210

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

VILLAGE OF HOBART, WISCONSIN,

Plaintiff-Appellant

v.

U.S. DEPARTMENT OF THE INTERIOR, *et al.*,

Defendants-Appellees

and

ONEIDA NATION,

Intervenor Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

RESPONSE BRIEF FOR DEFENDANTS-APPELLEES

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INTRODUCTION

In 2010, the Acting Regional Director (Regional Director) of the Bureau of Indian Affairs' Midwest Regional Office approved applications to acquire and take into trust approximately 500 acres of land for the benefit of the Oneida Nation (the Nation). Those lands lie within the exterior boundaries of the Nation's reservation. In her decision, the Regional Director exercised the Secretary of the Interior's (the Secretary) delegated authority under Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. 5101 *et seq.*, which authorizes the government to obtain and hold in trust "any interest in lands . . . for the purpose of providing land for Indians," *id.* § 5108.

After two rounds of administrative review, the Interior Board of Indian Appeals (IBIA) affirmed the Regional Director's decision. The Village filed this action under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, challenging Section 5's constitutionality, contesting the IBIA's ruling as arbitrary and capricious, and requesting leave to conduct extra-record discovery. The district court rejected all the Village's arguments.

This Court should do the same. Congress enacted Section 5 pursuant to its broad constitutional authority to regulate Indian affairs, and the Village's non-delegation challenge has been rejected by every court of appeals that has considered it. The Village fails to demonstrate that any aspect of the agency's review process or the IBIA's adjudication was arbitrary, capricious, or contrary to law. And the Village cannot surmount the high bar to show that the district court abused its discretion by denying extra-record discovery.

STATEMENT OF JURISDICTION

The Village challenged the IBIA's decision under the APA. The district court had jurisdiction under 28 U.S.C. 1331. On December 2, 2025, the court denied the Village's motion for summary judgment, affirmed the IBIA's ruling, and entered judgment in defendants' favor. A-30-31.[1] The Village appealed on January 30, 2026. Doc. 79. This Court has jurisdiction under 28 U.S.C. 1291.

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[1] "A-____" refers to the page number of plaintiff's appendix. "Doc. __, at __" refers to the docket entry and page number of documents filed on the district court's docket. "Br. __" refers to the page number of plaintiff's opening brief.

STATEMENT OF THE ISSUES

1. Whether the district court correctly held that Section 5 of the IRA is constitutional because Congress had sufficient authority to enact the statute and it contains an intelligible principle under the nondelegation doctrine.

2. Whether the district court correctly concluded that the IBIA's affirmance of the Regional Director's approval of the Nation's fee-to-trust applications was not arbitrary or capricious.

3. Whether the district court reasonably exercised its discretion in denying the Village's request for extra-record discovery.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Factual And Statutory Background

In the early nineteenth century, the Nation was part of the Iroquois Federation and had a homeland in New York. *Oneida Nation v. Village of Hobart*, 968 F.3d 664, 669 (7th Cir. 2020). However, "after years of encroachment, erosion of their land base, and pressure from both federal and state governments," members of the Nation were eventually "compelled" to "move west." *Ibid.* Two decades of forced relocation culminated in an 1838 treaty with the United States, under which the Nation ceded all title and interest in other lands in Wisconsin that earlier treaties had set apart for the tribe, in exchange for establishment of a Reservation near Green Bay, Wisconsin. *Id.* at 668-669.

Decades later, Congress embarked on "a nationwide policy of encouraging individual ownership of Indian reservation land." *Oneida Nation*, 968 F.3d at 669. Under this policy, "lands that had been held in severalty by the respective tribes" were instead allotted to individual tribal members. *Ibid.* Congress's goals "were simple and clear cut": help "extinguish tribal sovereignty" and "force the assimilation of Indians into the society at large." *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 254 (1992). The consequences of this policy were "disastrous for Indians" generally, and for the Nation specifically. *Oneida Nation*, 968 F.3d at 669. The Nation's Reservation was allotted, with many parcels "eventually conveyed to non-Indians by sale, foreclosure, or enforcement of tax liens." *Id.* at 670. By 1917, only 106 of the Nation's allotments remained in trust, "and over 50,000 of the 65,000 acres of reservation land were owned by non-Indians." *Ibid.* Notwithstanding these allotments, this Court has determined that "[t]he Oneida Reservation defined by the 1838 Treaty remains intact." *Id.* at 689.

Through adoption of the IRA in 1934, "federal policy toward Indian lands turned 180 degrees." *Oneida Nation*, 968 F.3d at 671. The Act halted the individual-allotment policy, facilitated the "re-establish[ment]" of tribal governments and landholdings, and sought to "rehabilitate" tribes' economic sustainability. *Ibid.* (citation omitted); *see also Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556, 561 (2d Cir. 2016) (explaining that the IRA "repudiated the allotment policy and aimed to restore to tribes, or replace, the lands and related economic opportunities that had been lost to them under it").

To those ends, Section 5 of the IRA authorizes the Secretary to acquire land "within or without existing reservations . . . for the purpose of providing land for Indians." 25 U.S.C. 5108. The United States takes title to such land "in trust for the Indian tribe or individual Indian for which the land is acquired," which renders it exempt from state and local taxation. *Ibid.* Regulations issued by the Bureau of Indian

Affairs, an agency within Interior, set forth a process by which tribes can request that the agency take land into trust on their behalf. *See* 25 C.F.R. 151.9. Another regulation, 25 C.F.R. 151.10, sets forth criteria the Secretary must consider when evaluating such requests.[2]

Section 5 works with other parts of the IRA to advance Congress's goal of facilitating the reacquisition of tribal homelands and reconstitution of tribal governments. *See*, *e.g.*, 25 U.S.C. 5101 (prohibiting further allotment of lands); *id.* § 5110 (authorizing the Secretary to proclaim new Indian reservations or expand existing reservations); *id.* § 5123 (establishing a federal process for tribes to adopt constitutions or bylaws).

B. Procedural History

1. Administrative Proceedings

In 2007, the Nation submitted a set of fee-to-trust applications to the Bureau of Indian Affairs for certain parcels of land within the

[2] Interior amended 25 C.F.R. Part 151 in 2023. *See* 88 Fed. Reg. 86,249 (Dec. 12, 2023). All citations to 25 C.F.R. Part 151 refer to the 2010 versions of those regulations, which applied when the challenged agency decisions issued.

Oneida Reservation.[3] A-4. The parcels are also located within the Village, which was created by the Wisconsin legislature in 1903 and lies within the reservation. *Oneida Tribe of Indians of Wis. v. Village of Hobart*, 891 F. Supp. 2d 1058, 1061 (E.D. Wis. 2012). The Bureau of Indian Affairs notified the Village about the applications, *see* 25 C.F.R. 151.9(d), and the Village submitted comments opposing the applications (A-4).

The Bureau of Indian Affairs reviewed the applications under a 2008-2010 Memorandum of Understanding (MOU) between the agency's Midwest Regional Office and a group of Indian tribes, including the Nation. *See* A-50-52; Doc. 34-10, at 24. Under the MOU, the Nation and other tribes served by the Office pooled their congressionally apportioned Tribal Priority Allocation funds and "reprogram[ed]" them to the Bureau of Indian Affairs' Division of Fee-to-Trust (the Division) to fund new staff positions. A-10; *see also* Doc.

[3] "Fee-to-trust" refers to the process by which land held in private, fee simple ownership by an Indian tribe or member of an Indian tribe is transferred to the United States to hold in trust, generally for the benefit of the transferor.

34-10, at 25.[4] The additional staffing helps expedite the processing of fee-to-trust applications and reduce application "backlog[s]." A-40; *see* Doc. 34-10, at 24-26. The Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975), authorizes such agreements by allowing tribes to enter into self-determination contracts and funding agreements with the federal government to ensure "maximum Indian participation" in directing the "plan[ning], conduct, and administ[ration]" of federal services so that they are "more responsive to the needs and desires of those communities." 25 U.S.C. 5302(a), 5321(a)(1); *see also id.* § 5363(b)(3).

As relevant here, the Regional Director issued six Notices of Decision that accepted eight properties, totaling 499 acres of land, into trust on behalf of the Nation. A-45-46.[5] The Village appealed the

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[4] Tribal Priority Allocation refers to Bureau of Indian Affairs' "budget formulation process that allows direct tribal government involvement in the setting of relative priorities for local operating programs." 25 C.F.R. 46.2.

[5] The Notices were issued by the then-Regional Director and an Acting Regional Director. A-45 n.3. Like the IBIA, this brief refers to these individuals collectively as the "Regional Director" and describes that individual, as well as the Secretary, as female. *See* A-45 nn.2, 3.

Notices, challenging Section 5's constitutionality and raising statutory, regulatory, and procedural challenges. A-46-47.

The IBIA consolidated the appeals, affirmed in part, and vacated in part. A-46. The IBIA concluded that it lacked jurisdiction to consider the constitutional challenge, rejected the Village's statutory and procedural arguments, and held that the Regional Director had failed to consider some of the Village's regulatory objections. A-47. Specifically, the Village had argued "for the first time on appeal" that the MOU "biased" the Division's review process, thereby violating principles of due process, because it permitted tribes to direct federal funding to the Bureau of Indian Affairs to expedite evaluation of fee-to-trust applications. A-47. The IBIA directed the Regional Director to consider this new argument on remand. A-48.

In January 2017, the Regional Director issued her remand decision, which rejected the Village's bias arguments. A-57. The Director explained that the Village had failed to demonstrate any "actual bias" in the Division's review process. A-52 (citation omitted). Even if the Village had established "possible bias" among Division staff, "the Regional Director's independent review of the materials" would have "cure[d] any such bias." A-52 (citation omitted); *see also* A-52 (noting the Village's failure to demonstrate that the Regional Director "failed to review the materials prepared by Division employees objectively"). The Village appealed. A-57.

The IBIA affirmed. A-91. It "address[ed] each of the Village's allegations" and found "no evidence of improper institutional bias" or denial of due process. A-59-60. Even if the MOU had created a conflict of interest, the IBIA explained that this would not have rendered the agency's approval process infirm "because those employees were not the decisionmakers." A-60. Rather, the challenged applications had been approved by the Regional Director, "who [was] an independent, neutral decisionmaker whose employment [was] not funded by the Midwest MOU." A-60.

2. District Court Proceedings

The Village filed suit in district court, challenging the IBIA's decision under the APA and raising the constitutional claims that the IBIA had lacked jurisdiction to adjudicate. A-2, 6.

1. After defendants filed their administrative record (Docs. 32-35), the Village moved to conduct extra-record discovery by, among other things, deposing the Regional Director, Division employees who had worked on fee-to-trust applications, and members of the Nation who had communicated with Division employees about pending applications (A-38; *see also* Doc. 39). The district court explained, however, that the Village's constitutional challenges "rest[ed] on legal arguments" that could be considered based on the administrative record. A-41.

Nor had the Village shown that extra-record discovery was appropriate for its claims of bias in the application-review process. *See* A-7. As above, the Village's argument that the provisions in and framework of the MOU violated the APA and the Due Process Clause could be addressed based on the administrative record. A-40. And the Village had failed to make a "strong showing of bad faith or improper behavior" to justify discovery delving into "the mental processes of administrative decisionmakers." A-38 (citation omitted). Accordingly, the court denied the Village's motion. A-41.

2. The Village moved for summary judgment (Doc. 56), and defendants sought an order affirming the IBIA's decision (Doc. 64, at 1). The district court denied the Village's motion and entered judgment in defendants' favor, holding that Section 5 of the IRA is constitutional and finding nothing arbitrary or capricious in the IBIA's analysis of the Regional Director's decision. A-17, 30-31.

The district court rejected both of the Village's constitutional attacks on IRA Section 5. First, the court held that Section 5 was a proper exercise of Congress's plenary power under the Indian Commerce Clause. A-25-26. Second, it rejected the Village's nondelegation challenge to Section 5. A-30. Like "all other circuits that ha[d] addressed [the issue]," the court found an intelligible principle in Section 5's "text, purpose, and statutory context," which directed the Secretary to exercise her authority under the statute to "further [tribal] economic development and tribal self-governance." A-29-30.

The district court also rejected the Village's due process and APA challenges to the fee-to-trust application process. Because the Village is not a "person" under the Due Process Clause, U.S. Const. Amend. V, the court held that it lacked standing to assert a constitutional due process claim (A-9 (citation omitted)). Regardless, that claim "fail[ed] on the merits." A-9.[6]

However, because "the procedural considerations subsumed in the APA's arbitrary and capricious standard" still applied, the district court considered the Village's argument that "the entire fee-to-trust process [was] tainted by bias" under the MOU. A-10. The court rejected this contention for multiple reasons. The IBIA's decision "thoroughly explained that the Village had failed to establish bias." A-17. For example, the Division's actions to "facilitat[e] the expeditious processing of fee-to-trust applications" did not constitute evidence of "prejudg[ment]." A-12 (citation omitted). Nor were the Division's communications with the Nation reflective of bias because agency regulations "require[d] [it] to communicate with the tribal applicant." A-12.

The Village also argued that the Division's processing of applications was "inherently biased" because Tribal Priority Allocation funds for the Nation and other tribes had been reprogrammed to

[6] The Village does not contest these due-process rulings on appeal.

increase staffing levels. A-13. But as the district court explained, the Regional Director was the ultimate decisionmaker on any application, and the administrative record "show[ed] that [she] undertook her own independent review of the trust applications, the Village's comments, and the related Notices of Decision." A-14-15. Consequently, even if the MOU had created a conflict of interest, "the Regional Director's independent review cured [it]" because "her position is not funded by the Midwest MOU." A-14.

Finally, the district court rejected the Village's challenge to the completeness of the Regional Director's and the IBIA's reviews. A-15-16. The Director's review comported with the IBIA's remand order, and the IBIA sufficiently considered the Village's claims of bias. A-15-16.

3. The district court affirmed the IBIA's ruling and entered judgment in defendants' favor. A-1. The Village appealed. Doc. 79.

SUMMARY OF ARGUMENT

I. Congress enacted Section 5 of the IRA under its broad constitutional authority to regulate Indian affairs.

A. Congress's plenary power over Indian affairs derives from, among other constitutional and pre-constitutional sources, the Indian

Commerce Clause, the Treaty Clause, and the United States' trust relationship with Indian tribes and their members. These provisions supplied sufficient authority for adoption of Section 5.

The Village takes a contrary view, arguing that Section 5 exceeds Congress's prerogatives. The Village fails, however, to reckon with the full extent of Congress's power to regulate Indian affairs, addressing only the Indian Commerce Clause. Regardless, the Village's Indian Commerce Clause arguments are meritless. The Village cites no precedent supporting its position, relying on stray lines from Supreme Court concurrences and dissents. It ignores Section 5's meaningful limitations on the Secretary's ability to take land into trust. And it overstates Section 5's impact on states and localities, relying on far-fetched hypotheticals that bear no similarity to the facts here or the agency's historical practice.

B. Nor does Section 5 violate the non-delegation doctrine. Like every court of appeals that has decided the issue, the district court correctly found an intelligible principle in Section 5's text, statutory context, and historical context. That intelligible principle guides the Secretary's exercise of authority under the statute, ensuring she takes land into trust when doing so will promote tribal self-reliance and self-governance.

The Village wrongly suggests the district court and those courts of appeals identified an intelligible principle by relying "almost exclusively" on legislative history. Br. 24, 27. It also derives no support from a vacated Eighth Circuit opinion that no other appellate court has found persuasive. Nor do the Village's remaining cases aid its cause. Rather, they confirm that Section 5 raises no nondelegation, or heightened constitutional, concerns.

II. The IBIA's order affirming the Regional Director's decision did not violate the APA. The Village identifies no arbitrary or capricious agency action under the Midwest Regional Office's MOU with the Nation, or in the review process that occurred here. Its arguments about the Regional Director's acceptance rate for fee-to-trust applications ignore applicable agency regulations and tribes' practice of withdrawing applications that are likely to be denied. Its criticisms of the Director's independent review of applications are contradicted by the record. And its challenge to the Director's compliance with the IBIA's remand order fundamentally misreads the order itself.

III. The district court did not abuse its discretion by denying leave to conduct extra-record discovery. The district court held that the Village failed to make a strong showing of bad faith or improper behavior, and here on appeal, the Village must demonstrate that no reasonable person could agree with that conclusion. The Village cannot do so. Its re-purposed arguments about the MOU, alleged prejudgment by Division staff, and the Regional Director's independent review evince no bad faith or improper behavior. Nor can the Village rely on speculation that evidence of bad faith—if any existed—would be excluded from the agency's administrative record. Moreover, the cases on which the Village relies are all inapposite or distinguishable.

ARGUMENT

I. Section 5 of the IRA is constitutional.

The district court correctly held that IRA Section 5 is a permissible exercise of Congress's plenary power over Indian affairs and contains an intelligible principle that guides the Secretary's exercise of discretion under the statute.

A. Standard Of Review

This Court reviews de novo a constitutional challenge to a federal statute. *See Center for Individual Freedom v. Madigan*, 697 F.3d 464, 476 (7th Cir. 2012).

B. Congress enacted Section 5 pursuant to its broad authority over Indian affairs.

Congress's plenary power to regulate in the field of Indian affairs supplied sufficient constitutional authority to enact Section 5.

1. Congress's plenary power derives from multiple constitutional sources.

In a "long line" of cases dating back to the 19th century, the Supreme Court has emphasized that "Congress's power to legislate with respect to the Indian tribes [is] 'plenary and exclusive.'" *Haaland v. Brackeen*, 599 U.S. 255, 272 (2023) (citation omitted). This authority derives "both explicitly and implicitly from the Constitution itself." *Morton v. Mancari*, 417 U.S. 535, 551-552 (1974). For centuries, federal law has "recognized Indian tribes as 'distinct, independent political communities'" that "exercise many of the powers and prerogatives of self-government." *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327 (2008) (citation omitted). Congress's authority to manage "Indian affairs" thus draws on "military and foreign policy" aspects of "preconstitutional powers necessarily inherent in any Federal Government." *Brackeen*, 599 U.S. at 274. The Indian Commerce Clause and the Treaty Clause also provide "source[s] of power" for Congress to regulate Indian affairs. *Ibid.*; *see also United States v. Lara*, 541 U.S. 193, 200 (2004) (citing a treatise's identification of the Property Clause as an additional source of authority). Additionally, the United States' trust relationship with the Indian people "informs the exercise of legislative power." *Brackeen*, 599 U.S. at 274.

With these multiple bases for constitutional authority, Congress has "well established and broad" legislative powers in Indian affairs. *Brackeen*, 599 U.S. at 275. This extends to "property" issues, as well as matters relating to "criminal law, domestic violence, employment . . . tax, and trade." *Ibid.* Indeed, the Court has "only rarely concluded that a challenged statute exceeded Congress's power to regulate Indian affairs." *Ibid.*

Against this backdrop, enactment of Section 5 fell comfortably within Congress's power over Indian affairs. For centuries, regulation of property and land has been a core part of Congress's Indian-affairs authority, as evidenced by myriad Founding-era statutes and treaties. Among other things, that authority empowers Congress to establish reservations; acquire, sell, and own land in trust for Indians and tribes; and facilitate tribal self-government and economic development. *See* Treaty with the Oneida, 7 Stat. 566 (1838) (creating the Oneida Reservation); *see also, e.g.*, Nonintercourse Act, 1 Stat. 137 § 4 (1790) (prohibiting alienation of Indian land without federal approval); Indian Gaming and Regulatory Act, 25 U.S.C. 2701 *et seq.* (establishing a regulatory scheme for gaming on eligible Indian lands). Section 5 authorizes similar action. It permits the Secretary to "acquire" land—whether through "purchase, relinquishment, gift, exchange, or assignment"—and take it into trust "for the purpose of providing land for Indians." 25 U.S.C. 5108.

The Supreme Court's decision in *Morton v. Mancari* confirms Congress's power to enact Section 5. *Morton* considered an equal-protection challenge to IRA Section 12, which affords a hiring preference to qualified Indians applying for vacancies at, among other places, the Bureau of Indian Affairs. *See* 25 U.S.C. 5116. When explaining why the equal-protection challenge failed, the Court recounted Congress's enactment of Section 12 pursuant to its "plenary power" over Indian affairs under the Indian Commerce Clause, the Treaty Clause, and the United States' trust relationship with the Indian people. *Morton*, 417 U.S. at 551-552.

The same constitutional authority underlies Section 5. As the Court described, Section 12 "further[s] the cause of Indian self-government" and advances the IRA's over-arching objective of vesting tribes with "greater control of their own destinies." *Morton*, 417 U.S. at 553-554. As discussed in greater detail below, Section 5 also advances those goals through its fee-to-trust mechanism. *See* pp. 33-38, *infra*. Accordingly, the same congressional powers to regulate Indian affairs undergird its constitutionality, as well. *See Carcieri v. Kempthorne*, 497 F.3d 15, 40 (1st Cir. 2007) (holding that Section 5 is constitutional under Congress's "plenary authority to regulate Indian affairs"), *rev'd on other grounds*, 555 U.S. 379 (2009).

2. The Village understates Congress's authority and overstates Section 5's impact on states and localities.

The Village's arguments to the contrary are meritless.

a. The Village identifies no case law holding that Section 5 exceeds the wide berth Congress enjoys when regulating Indian affairs. The snippets from Supreme Court concurrences and dissents that the Village cites (Br. 13-15) underscore the lack of precedential authority supporting its position. *Cf. Savory v. Cannon*, 947 F.3d 409, 421 (7th Cir. 2020) (rejecting reliance on "dicta from a collection of concurrences and dissents"). Moreover, despite the multiple constitutional sources for Congress's "muscular" authority in this area of law, *Brackeen*, 599 U.S. at 273, the Village only asserts that Section 5 oversteps Congress's Indian Commerce Clause powers, *see* Br. 12-19. The Village cannot show that Section 5 transgresses Congress's constitutional authority without grappling with the full scope of that power.

But regardless, the Village's arguments are unavailing. The Village suggests that legislation under the Indian Commerce Clause must be "[]tethered [to] commerce" in some way. Br. 14. Case law refutes this proposition. *See, e.g.*, *Brackeen*, 599 U.S. at 278 ("[O]ur precedent states that Congress's power under the Indian Commerce Clause encompasses not only trade but also 'Indian affairs.'" (citation omitted)); *Upstate Citizens*, 841 F.3d at 568 (rejecting the argument that the Clause requires "regulat[ion] [of] commerce" (alterations in original)). Even if such a connection were required, the Village cannot explain why Section 5 lacks a sufficient "'nexus' to Indian Commerce." Br. 14 (quoting *Brackeen*, 599 U.S. at 325 (Gorsuch, J., concurring)). Rather, Section 5's exemption of trust lands from state and local taxation, *see* 25 U.S.C. 5108, supplies an obvious nexus. *See Brackeen*, 599 U.S. at 332 (Gorsuch, J., concurring) (explaining that "commerce" has a "special usage" under the Indian Commerce Clause, and restrictions on how states "may engage with Indians . . . fall[] in the heartland of Congress's constitutional authority").

b. Next, the Village contends that the district court erred by treating Congress's authority under the Indian Commerce Clause as "limitless." Br. 15. This argument finds no basis in the court's opinion, which expressly acknowledged that Congress's power under the Clause "is not unbounded." A-26 (citation omitted). Contrary to the Village's suggestion, the court's recognition of Congress's "plenary" authority does not reflect disregard for the limits on that authority. Br. 15 (quoting A-26).

Regardless, the Secretary's authority under Section 5 is far from "unbounded." Br. 13 (citation omitted). The Secretary may only acquire land in trust for "Indians," 25 U.S.C. 5108, as limited by the definition in Section 19, 25 U.S.C. 5129. The United States must acquire the land "through purchase, relinquishment, gift, exchange, or assignment." 25 U.S.C. 5108. Notably missing from this list is the option of condemnation, meaning that acquisition is confined to voluntary transactions and cannot be accomplished through eminent domain. Section 5's appropriation cap of $2 million that can be used to acquire land in a single fiscal year, *ibid.*, imposes yet another constraint.

c. The Village also suggests that Section 5 unconstitutionally infringes on states' rights. For example, quoting *Printz v. United States*, 521 U.S. 898, 919 (1997), the Village insinuates that Section 5 "intrude[s]" on states' "residuary and violable sovereignty." Br. 14.

Not so. *Printz* addressed specific examples of residual state sovereignty embodied in particular constitutional provisions, like the Tenth Amendment, the Guarantee Clause, and Article V's process for constitutional amendment. *Printz*, 521 U.S. at 919. In contrast, this implicates the Indian Commerce Clause and the Treaty Clause, which make Congress's authority over Indian affairs "plenary and exclusive." *Brackeen*, 599 U.S. at 272 (citation omitted). Those provisions "erect [no] firewall around," and include no "constitutional carveout" for, state or local-government-regulated lands that are owned in fee simple by a tribe or tribal member and then acquired and held in trust by the United States. *Id.* at 277. Moreover, because the power to regulate Indian affairs resides with Congress and not states, "principles of state sovereignty do not impair the federal government's power under the IRA to acquire land on behalf of [a tribe]," even if that acquisition diminishes a state's "governmental power over that land." *Upstate Citizens*, 841 F.3d at 570.

The Village also cites *NFIB v. Sebelius*, 567 U.S. 519 (2012), suggesting that Section 5 "fundamentally" and improperly "restructure[d] the federal-state balance." Br. 16. The portion of *NFIB* to which the Village refers (Br. 16), however, explained why Congress lacked authority under the Commerce Clause to enact the individual mandate in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010). *See NFIB*, 567 U.S. at 552-558; *see also*

Br. 18 (citing other Commerce Clause cases). Beyond the obvious factual distinctions between the federal actions challenged in *NFIB* and here, the Supreme Court has already clarified that principles applicable to the Commerce Clause are "not readily imported to cases involving the Indian Commerce Clause." *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989). While the Commerce Clause seeks to "maintain[] free trade among the States even in the absence of implementing federal legislation," the Indian Commerce Clause vests "Congress with plenary power to legislate in the field of Indian affairs." *Ibid.* Accordingly, the two Clauses have "very different applications." *Ibid.* *NFIB* thus lends no support to the Village's argument that enactment of Section 5 fell outside Congress's power under, among other provisions, the Indian Commerce Clause.

d. The Village's policy arguments fare no better. It urges against a reading of Section 5 that would "preclude[] States from asserting fundamental aspects of their sovereignty over" land taken into trust, citing potential impacts on, among other things, criminal and civil enforcement and state and local tax revenue. Br. 16.

This argument overstates the impact of trust acquisitions on state sovereignty. Wisconsin retains criminal jurisdiction over the Oneida Reservation, including trust lands. *See* 18 U.S.C. 1162(a). While civil jurisdiction is constrained in some instances by the land's trust status—for example, state taxation or land-use regulation—that is a consequence of federal preemption under the Supremacy Clause. *See, e.g.*, *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-344 (1983); *Santa Rosa Band of Indians v. Kings Cty.*, 532 F.2d 655, 658-659 (9th Cir. 1975). In other instances, the State retains civil regulatory jurisdiction over non-Indians. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-145 (1980) (explaining that a state may retain civil jurisdiction when its laws are not preempted by federal law and do not impede tribal self-government). Thus, as the Second Circuit explained, state jurisdiction is "only reduced, and not eliminated, when the federal government takes land into trust for a tribe" under Section 5. *Upstate Citizens*, 841 F.3d at 572. This reduction "does not run afoul of general principles of state sovereignty." *Id.* at 577.

The Village protests that Section 5 could permit "any land to be stripped from" state and local governments. Br. 17. But Congress codified such discretion in the statute, permitting the Secretary to acquire land "within or without [an] existing reservation[]." 25 U.S.C. 5108. The Village identifies no constitutional constraint on Congress's ability to confer such authority.

The Village warns, however, that the Secretary could exercise this authority to "remove all land from a State." Br. 17. Such alarm is unfounded. The Village's hypothetical bears no relation to the facts here, which involve lands within an existing reservation, and such action is highly implausible given the constraints Congress included in Section 5. As explained above, the Secretary can only acquire land that the United States purchases, subject to an annual appropriations cap, or that is voluntarily conveyed to the government. 25 U.S.C. 5108. And as discussed below, taking land into trust must further Indian self-determination and self-government. *See* pp. 33-38, *infra*. There is no reason this could or would entail reduction of a state "to nonexistence by taking all land within its borders." Br. 17 (citation omitted).[7]

Finally, the Village argues that the amount of land (67 million acres) currently held in trust for Indian tribes and individual Indians corroborates its concern that "[t]he Village's very existence is at stake." Br. 18-19. That is, however, a *nationwide* figure. *See* U.S. Government Accountability Office, *Tribal Issues: Bureau of Indian Affairs Should Take Additional Steps to Improve Timely Delivery of Real Estate Services* 6 (Nov. 6, 2023), https://www.gao.gov/assets/gao-24-105875.pdf (last visited July 15, 2026). And the vast majority of these lands were not acquired in trust pursuant to Section 5; rather, they were secured

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[7] The Village quotes Justice Gorsuch's concurrence in *Brackeen*, 599 U.S. at 325, to argue that Congress's Indian Commerce Clause authority cannot facilitate "annihilat[ion]" of a state's political existence. Br. 17-18. In that quote, however, Justice Gorsuch was discussing the Clause's solicitude towards *Indian tribes*, not states. Specifically, Justice Gorsuch was explaining why the Indian Commerce Clause does not permit Congress to "reassign to the federal government inherent sovereign authorities that belong to [Indian] Tribes." *Brackeen*, 599 U.S. at 325 (Gorsuch, J., concurring). Such a reading could empower Congress to "dives[t] [tribes] of the right of self-government," thus "annihilating the[ir] political existence." *Ibid.* Interpreting the Clause to permit this result, Justice Gorsuch explained, was "inconceivable." *Ibid.* (citation omitted).

by treaties or statutes. Moreover, in 2017, when the Regional Director issued her remand decision, the United States held only 14,000 acres of land in trust for the Nation—far less than the 65,000 acres that had been originally held in trust as part of the Oneida Reservation. *Oneida Nation v. Village of Hobart*, 968 F.3d 664, 669, 671 (7th Cir. 2020); *see also* Treaty with the Oneida, art. II, 7 Stat. 566. All land at issue here (499 acres) had been part of the original Oneida Reservation.

The Village nonetheless argues that the Nation seeks to purchase 1,200 acres of land annually. Br. 18-19. The Village identifies no authority suggesting that subsequent conversion of purchased lands into trust would exceed Congress's constitutional authority. Nor does it offer a basis for concluding that some or all of the land would come from the Village—indeed, such a circumstance would entail sale of the land by the Village itself to the Nation. Even if the Nation's future plans were relevant the constitutional question, the Nation's recent land purchases have been limited. For example, in 2025, the Nation purchased only 236 acres of new land. Oneida Nation, *2026 Annual Report* 79 (2026), https://perma.cc/L6ML-E6C6; *see also* Br. 19 (citing this report). Moreover, if the Nation purchased additional land and requested that it be taken into trust, the Regional Director would still need to consider the regulatory factors listed at 25 C.F.R. 151.10 and approve such action. Trust conversion, therefore, is far from guaranteed.

C. Section 5 contains an intelligible principle.

1. The Non-Delegation Doctrine

Article I of the Constitution allocates "[a]ll legislative Powers" to Congress. U.S. Const., Art. I, § 1. Although these legislative powers "belong[] to the legislative branch," Congress may "'seek[] assistance' from its coordinate branches to secure the 'effect intended by its acts of legislation.'" *FCC v. Consumers' Rsch.*, 606 U.S. 656, 672 (2025) (citation omitted). Accordingly, "Congress does not violate the Constitution merely because it legislates in broad terms, leaving a certain degree of discretion to executive or judicial actors." *Touby v. United States*, 500 U.S. 160, 165 (1991).

To distinguish between a permissible vesting of authority in an agency to implement a statute and an impermissible delegation of legislative power, the nondelegation doctrine "ask[s] whether Congress has set out an 'intelligible principle' to guide what it has given the agency to do." *Consumers' Rsch.*, 606 U.S. at 673 (citation omitted). A statute satisfies this requirement if it sets forth "'the general policy' that the agency must pursue and 'the boundaries of [the agency's] delegated authority.'" *Ibid.* (citation omitted).

This standard is "not demanding." *Gundy v. United States*, 588 U.S. 128, 146 (2019). It reflects "a practical understanding that . . . Congress simply cannot do its job absent an ability to delegate power under broad general directives." *Mistretta v. United States*, 488 U.S. 361, 372 (1989). By the Supreme Court's own admission, it has "almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law." *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 474-475 (2001) (citation omitted).

2. Section 5's intelligible principle is reflected in its text, statutory context, and historical context.

The district court concluded—like every court of appeals that has decided the issue—that Section 5 contains an intelligible principle that guides the Secretary's application of the statute. *See Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23, 33 (D.C. Cir. 2008); *Carcieri*, 497 F.3d at 43; *South Dakota v. Department of Interior*, 423

F.3d 790, 799 (8th Cir. 2005) (*South Dakota II*); *United States v. Roberts*, 185 F.3d 1125, 1137 (10th Cir. 1999). "The Supreme Court has underscored that 'the general policy and boundaries of a delegation need not be tested in isolation . . . [because] statutory language may derive content from the purpose of the Act, its factual background and the statutory context.'" *Michigan Gambling Opposition*, 525 F.3d at 30 (citation omitted; alterations in original). Each of these considerations reflects Section 5's intelligible principle, which requires that land be taken into trust to further tribal self-reliance and self-governance.

Section 5's text conveys this intelligible principle. It states that any land taken into trust must be done "for the purpose of providing land for Indians." 25 U.S.C. 5108. As the en banc First Circuit explained, this language carries "specific meaning in light of the failure of the [United States' prior] allotment policy and [c]ongressional rejection of assimilation as a goal." *Carcieri*, 497 F.3d at 42 (citation omitted); *see also* pp. 4-5, *supra* (recounting that allotment policy). As discussed, the allotment policy sought to "extinguish tribal sovereignty" and resulted in significant loss of Indian lands. *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 254 (1992). The IRA charted a markedly different path, empowering the Secretary to take certain lands into trust for "Indian tribe[s]." 25 U.S.C. 5108. The D.C. Circuit thus recognized that Section 5's use of the phrase "for the purpose of providing land for Indians" constitutes a directive to the Secretary "to exercise [her] powers in order to further economic development and self-governance among the Tribes" and "ameliorat[e] the damage resulting from" the prior allotment policy. *Michigan Gambling Opposition*, 525 F.3d at 31 (citation omitted).[8] This Court has alluded to this purpose. *See Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 367 F.3d 650, 653 (7th Cir. 2004) (noting that Section 5 permits the Secretary to acquire lands in trust "for the benefit of Indian tribes").

[8] The Village wrongly suggests the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), undermines *Michigan Gambling Opposition*'s persuasive force. Br. 27 n.6. *Michigan Gambling Opposition* briefly explains that an intelligible principle "need not be utterly unambiguous" because "Congress may delegate interstitial lawmaking authority to executive agencies," citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). 525 F.3d at 33. Although *Loper Bright* overruled *Chevron*, *see* 603 U.S. at 412, it did not address the nondelegation doctrine or its intelligible-principle requirement.

The Supreme Court's opinion in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012), confirms this reading of the statutory text. Although the Court only decided whether a challenge to the Secretary's acquisition of land under Section 5 could go forward, *see id.* at 212, it described in detail the way in which Section 5's fee-to-trust process promotes Indian economic self-reliance. As the Court explained, "[l]and forms the basis" for Indian financial stability because it permits "tourism, manufacturing, mining, logging, . . . and gaming" activities. *Id.* at 226 (citation omitted). By authorizing the Secretary to take into trust "lands sufficient to enable Indians to achieve self-support," Section 5 "functions as a primary mechanism to foster Indian tribes' economic development." *Ibid.* (citation omitted). Accordingly, "when the Secretary obtains land for Indians under [Section 5], she does not do so in a vacuum." *Ibid.* "Rather, she takes title to properties with at least one eye directed toward how tribes will use those lands to support economic development." *Ibid.* This conclusion all but confirms that Section 5 contains an intelligible principle.

If more were needed, the IRA's purpose supplies it. The Act aims to "conserve and develop Indian lands and resources"; "extend to Indians the right to form business and other organizations"; and "grant certain rights of home rule to Indians." Indian Reorganization Act, Pub. L. No. 73-383, 48 Stat. 984 (1934). Put succinctly, the IRA's "overall effort" is "to rehabilitate the Indian's economic life." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 567 U.S. at 226 (citation omitted). This aim "accords" with the understanding that Section 5 seeks to promote Indian independence and self-determination. *Michigan Gambling Opposition*, 525 F.3d at 31.

Other IRA provisions similarly reflect this objective. The statute's enacting clause, codified at 25 U.S.C. 5101, bars allotment of Indian reservation land. Section 2 extends indefinitely the duration of tribal trusts. *See id.* § 5102. Section 3 authorizes the Secretary to "restore to tribal ownership" certain "surplus lands of any Indian reservation." *See id.* § 5103. Section 7 permits the Secretary to establish new reservations and add lands to existing reservations. *See id.* § 5110. Sections 9 and 10 appropriate funds for defraying the costs of organizing Indian chartered corporations, and for making loans to such corporations "for the purpose of promoting the economic development of such tribes and of their members." *Id.* §§ 5112, 5113. And Section 16 grants tribes the right "to organize for [their] common welfare" and "adopt an appropriate constitution and bylaws." *Id.* § 5123 (1987). These neighboring provisions "underscore[] section 5's role as part of a broad effort to promote economic development" and autonomy among Indian tribes. *Michigan Gambling Opposition*, 525 F.3d at 31; *see also Carcieri*, 497 F.3d at 42 (relying on these provisions).

The IRA's historical context confirms Section 5's focus on cultivating Indian self-sufficiency and self-rule. "The IRA was enacted against a backdrop of great concern over economic and social challenges facing American Indians . . . especially over the consequences of the federal government's allotment policy." *Michigan Gambling Opposition*, 525 F.3d at 32. That policy "resulted in many tribal lands being distributed to individuals who then lost control of them, often because of fraud or inability to pay taxes." *Ibid.* Indeed, a contemporaneous report by the Secretary found "destructive effects . . . on the economic, social, cultural and physical well-being of the tribes." *Ibid.* (citation omitted).

As this Court has recognized, through the IRA, "federal policy toward Indian lands turned 180 degrees" by "stem[ming] the loss of Indian land holdings brought on by allotment" and "giv[ing] tribes the opportunity to re-establish their governments and land holdings." *Oneida Nation*, 968 F.3d at 671; *see also Michigan Gambling Opposition*, 525 F.3d at 32 (explaining that the IRA "[r]eturn[ed] to the principles of tribal self-determination and self-governance" (citations omitted; alterations in original)). That intention, born of the post-allotment-policy era, reverberates throughout the IRA, *see* pp. 36-37, *supra* (discussing other IRA provisions), and supplies Section 5 with an intelligible principle.

Finally, Section 5's intelligible principle is evident in the IRA's legislative history. That history evinces Congress's recognition that Interior cannot achieve the IRA's broader goals without first restoring tribal land bases. *See, e.g.*, H.R. Rep. No. 1804, 73d Cong., 2d Sess. 6-7 (1934); 78 Cong. Rec. 11727, 11730, 11732 (1934) (statements of Rep. Howard).

3. The Village mischaracterizes and misunderstands these and other appellate court decisions.

a. None of the Village's arguments demonstrates that, contrary to the unanimous view of other courts of appeals, Section 5 lacks an intelligible principle. First, the Village contends that, to discern an intelligible principle in the statute, the district court had to rely "almost exclusively on legislative history and generalized purpose." Br. 24. The court's opinion plainly contradicts this assertion.

The district court reviewed decisions by the First, Eighth, Tenth, and D.C. Circuits and explained that those courts identified an intelligible principle in Section 5's "text, purpose, and statutory context." A-29. In particular, the court focused on the Eighth Circuit's decision in *South Dakota II*. There, the Eighth Circuit located an intelligible principle "in the statutory phrase 'for the purpose of providing lands for Indians'" when considered against the IRA's "statutory and historical context." A-29 (citation omitted). The Eighth Circuit also found support in Section 5's purpose, which was to "further economic development and tribal self-governance." A-30; *see also* A-30 (explaining that other courts of appeals "used similar reasoning"). The district court's summary of the multi-faceted analyses conducted by the Eighth Circuit and other appellate courts belies the Village's accusation that it relied predominantly on legislative history.

The Village lodges similar criticisms of those appellate court decisions, contending that they too relied "almost exclusively on legislative history and generalized purpose." Br. 26-27. It further argues that when the Supreme Court has found an intelligible principle based on a statute's legislative history, it also discerned support in the statute's text and context. Br. 22-23. This argument implicitly concedes the materiality of legislative history in the intelligible-principle analysis. *See also Carcieri*, 497 F.3d at 42 n.20 (explaining that the Supreme Court considers legislative history when evaluating nondelegation challenges). But even if the Village were right that statutory text and context are somehow prerequisites for consulting legislative history, the First, Eighth, and D.C. Circuits conducted proper analyses because those courts found an intelligible principle in Section 5's text and neighboring statutory provisions, in addition to the statute's legislative history. *See Michigan Gambling Opposition*, 525 F.3d at 31-32; *Carcieri*, 497 F.3d at 42; *South Dakota II*, 423 F.3d at

797-798; *see also Roberts*, 185 F.3d at 1137 (citing the statute's text and legislative history).[9]

b. The Village's arguments based on the Eighth Circuit's vacated decision in *South Dakota v. Department of Interior*, 69 F.3d 878 (8th Cir. 1995) (*South Dakota I*), fare no better. There, a divided panel held that Section 5 constitutes an unconstitutional delegation of legislative power. *Id.* at 880.

The Supreme Court, however, vacated that opinion. *See Department of Interior v. South Dakota*, 519 U.S. 919, 919-920 (1996). As the Eighth Circuit later summarized, the majority in *South Dakota I* held that Interior had "interpreted its own power too broadly and was exercising that power in an unchecked manner because it had also interpreted the statute as delegating unreviewable discretionary authority to the Secretary." *South Dakota II*, 423 F.3d at 793. After Interior promulgated a new regulation providing for judicial review, the

[9] The Village appears to conflate a provision's "statutory and historical context" and its "legislative history." Br. 27 (citation omitted). Statutory and historical context are, however, distinct from the documents that comprise a statute's legislative history, like committee reports, congressional statements, and transcripts. *See Legislative History*, Black's Law Dictionary (12th ed. 2024).

Supreme Court vacated *South Dakota I* and remanded to the agency "in light of the new regulation." *Ibid.* Then, in subsequent litigation, the Eighth Circuit "reexamine[d]" the nondelegation question, "agree[d] with the views expressed by" the dissent in *South Dakota I*, and held that Section 5 contains an intelligible principle. *Id.* at 796-797, 799. The Eighth Circuit continues to adhere to this view. *See County of Charles Mix v. Department of Interior*, 674 F.3d 898, 902 (8th Cir. 2012); *South Dakota v. Department of Interior*, 487 F.3d 548, 551 (8th Cir. 2007).

The Village thus derives no support from *South Dakota I*. Because the opinion was vacated, it is "as if the [opinion] had never existed." *Mitchell v. Joseph*, 117 F.2d 253, 255 (7th Cir. 1941). Accordingly, it lacks any "precedential force." *United States v. Love*, 706 F.3d 832, 840 n.2 (7th Cir. 2013); *see also Carcieri*, 497 F.3d at 42 (concluding the same); *Roberts*, 185 F.3d at 1136 (same). Nor does the opinion offer any persuasive value. As Judge Murphy explained in her *South Dakota I* dissent, the majority's analysis "strays far from the existing path of nondelegation doctrine," conflicts with Supreme Court precedent by "invalidating a statute as an unlawful delegation based on the broadest possible reading of its terms," and relies on "policy" concerns. 69 F.3d at 886-888. Other courts, including the Eighth Circuit, have endorsed Judge Murphy's analysis. *See South Dakota II*, 423 F.3d at 797 (agreeing with "the views expressed by Judge Murphy in her dissent in *South Dakota I*"); *see also Carcieri*, 497 F.3d at 42 (relying on Judge Murphy's dissent); *Roberts*, 185 F.3d at 1137 & n.9 (same). Meanwhile, no court of appeals has found the reasoning in *South Dakota I*'s majority opinion to be convincing.

c. Next, the Village argues that Section 5 provides too little "guidance" to satisfy "the intelligible principle test." Br. 22. That contention is irreconcilable with past Supreme Court nondelegation cases, which upheld statutes that "direct agencies to act in the 'public interest,' or in a way that is 'fair and equitable.'" *Michigan Gambling Opposition*, 525 F.3d at 31 (citations omitted). As the D.C. Circuit explained, Section 5's "delegation is no broader than [those] statutes." *Ibid.*

Even if that were not the case, the Village's argument would still fail. As the Supreme Court explained when considering a nondelegation challenge to the Interstate Commerce Act, 49 U.S.C. 1 *et* *seq.*, it would be a "mistaken assumption" to view the phrase "public interest" as "a mere general reference to public welfare without any standard to guide determinations" because "[t]he purpose of the Act, the requirements it imposes, and the context of the provision" supply such guidance. *New York Cent. Sec. Corp. v. United States*, 287 U.S. 12, 24 (1932); *see also Consumers' Research*, 606 U.S. at 684 (quoting this language in a subsequent case). As explained above, the same conclusion applies here.

The Village also perceives a conflict between the district court's conclusion below and decisions by the Supreme Court in *Gundy* and this Court in *City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020). No such conflict exists. *Gundy* and *City of Chicago* considered interpretations of statutes that would have given the government discretion to decide whether a statute imposes certain legal obligations on regulated parties.

For example, *Gundy* concerned the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. 20901 *et seq.*, which stated that "[t]he Attorney General shall have the authority to specify the applicability of" certain registration requirements to individuals convicted of a sex offense prior to SORNA's enactment, *id.* § 20913(d). The defendant argued that the provision gave the Attorney General "plenary power to determine SORNA's applicability to pre-Act offenders—to require them to register, or not, as she sees fit, and to change her policy for any reason and at any time." *Gundy*, 588 U.S. at 136. A plurality of the Court stated that, "[i]f that were so, [the Court] would face a nondelegation question." *Ibid.* But no such question was presented because the statute tasked the Attorney General with "specify[ing] *how* to apply SORNA" to pre-Act offenders, and not with "specify[ing] *whether* to apply SORNA" to pre-Act offenders. *Id.* at 144 (emphases in original).

Similarly, in *City of Chicago*, this Court considered a provision in the Edward Byrne Memorial Justice Assistance Grant Program requiring state and local government applicants to certify their compliance with Part A of the statute "and all other applicable Federal laws." *City of Chicago*, 961 F.3d at 896-897 (quoting 34 U.S.C. 10153(A)(5)(D)). The Attorney General argued that this language incorporated all federal laws applicable to states and localities, including 8 U.S.C. 1373. *Id.* at 897-898. Under Section 1373, states and localities may not restrict their officials from sending the Immigration and Naturalization Service information about a person's citizenship or immigration status. *See* 8 U.S.C. 1373(a). Citing *Gundy*, this Court held that it would raise "grave constitutional concerns" to read Section 10153(A)(5)(D) to give the Attorney General "unfettered discretion to determine *whether* a particular federal law"—like Section 1373—"will be a precondition of [a] grant." *City of Chicago*, 961 F.3d at 907 (emphasis in original); *see also id.* at 899 (adopting a narrower interpretation of Section 10153(A)(5)(D)).

Such concerns are not present here. Section 5 does not charge the Secretary with determining *whether* the statute applies to particular lands. Rather, Congress already made that decision: the Secretary may acquire "any interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians." 25 U.S.C. 5108. As in *Gundy*, the Secretary's task is merely to decide "*how* to apply [Section 5]" to lands covered by the statute, and she does so by approving or rejecting applications to take land into trust. 588 U.S. at 144 (emphasis in original). This implementation authority raises no nondelegation concerns. *See City of Chicago*, 961 F.3d at 907.

d. The Village also asserts that Section 5 provokes "heighten[ed]" constitutional concerns because it grants the Secretary "unlimited authority" to take land into trust, thus burdening state and local governments. Br. 29-30, 32. This argument ignores the many constraints Congress included in Section 5. But regardless, the Secretary's Section 5 authority "is not so broad as to require limiting principles more specific than pursuing Indian economic development." *Michigan Gambling Opposition*, 525 F.3d at 33. This is especially true given the "extensive authority" the Executive Branch has "historically enjoyed . . . in conducting relations with American Indians, which has included negotiating treaties with Indian tribes and granting reservations to them by executive order." *Ibid.*

Moreover, the authority afforded by Section 5 is far more limited than that authorized under the only two statutes the Supreme Court has ever found to violate the nondelegation doctrine. *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), concerned authority delegated to the President to prohibit interstate and foreign trade in petroleum goods produced in excess of state quotas. *See id.* at 405. Such authority violated the nondelegation doctrine because it "'establish[ed] no criterion'" and "'declar[ed] no policy'" for "whether, when, or how" the President should adopt such prohibitions. *Consumers' Rsch.*, 606 U.S. at 683 (quoting *Panama Refining*, 293 U.S. at 415).

Next, the statute in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), authorized the President to approve "'codes of fair competition' for 'the government of trade and industry throughout the country.'" *Consumers' Rsch.*, 606 U.S. at 683 (quoting *Schechter Poultry*, 295 U.S. at 529, 542). The statute violated the nondelegation doctrine because it "imposed 'few restrictions' and 'set[] up no standards' aside from a 'statement of the general aims of rehabilitat[ing], correct[ing,] and expand[ing]' the economy." *Ibid.* (quoting *Schechter Poultry*, 295 U.S. at 541-542). As the Eighth Circuit explained, Section 5 is not comparable to these two statutes because it "does not involve granting to the executive authority to unilaterally enact a sweeping regulatory scheme that will affect the entire national economy." *South Dakota II*, 423 F.3d at 797.[10]

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[10] The Village argues, in conclusory fashion, that Section 5's annual appropriation cap of $2 million that can be used by the Secretary to acquire land, *see* 25 U.S.C. 5108, is "illusory" and thus the Eighth Circuit erred in relying on it (Br. 26). Even if the Village's

Finally, the Village references its prior argument about Section 5 allegedly upsetting "the federal-state balance" and the consequent need for "clear congressional guidance." Br. 30. But as discussed, Section 5 raises no federalism concerns and its text straightforwardly delegates authority to accomplish a cognizable statutory purpose. *See* pp. 24-29, 33-34, *supra*. The Village contests the Secretary's exercise of that authority here. Br. 30-32. But such a challenge properly arises under the APA, and as explained below, plaintiffs' APA arguments are meritless.

II. The IBIA's affirmance of the Regional Director's approvals did not violate the APA.

A. Standard Of Review

This Court reviews de novo a district court's ruling under the APA. *See Kelly v. EPA*, 203 F.3d 519, 521 (7th Cir. 2000). Agency action violates the APA if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. 706(2)(A). An agency acts arbitrarily and capriciously only if it "[r]elie[s] on factors

characterization of the appropriation cap were accurate, Section 5 imposes many additional constraints on the Secretary's authority, and the Eighth Circuit correctly cited other aspects of the statute that provide a sufficiently intelligible principle. *See* pp. 24, 39-40, *supra*.

which Congress has not intended it to consider, entirely fail[s] to consider an important aspect of the problem, [or] offer[s] an explanation for its decision that runs counter to the evidence before the agency." *Smith v. Garland*, 103 F.4th 1244, 1252 (7th Cir. 2024) (citation omitted). This standard affords "great deference" to the agency. *Ibid.* "A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

B. The IBIA's order was not arbitrary or capricious.

The Village cannot carry its burden to show that any aspect of the IBIA's order was arbitrary or capricious.

1. The MOU

The Village challenges the MOU's review and approval process for fee-to-trust applications, arguing that it is biased in favor of acceptance. Br. 36. Parsing the MOU's language, the Village points to the MOU's definition of "Division," which includes staff "assigned to work on trust acquisition cases" (Doc. 1-3, at 2), and asserts that "'[a]quisition' . . . can only mean 'acceptance'" (Br. 35 (internal quotation marks omitted)).[11] The MOU makes clear, however, that "trust acquisition" simply references the fee-to-trust applications that such staff handle. *See* Doc. 1-3, at 4 (describing staff review of "request[s] for fee-to-trust acquisition"). The Village also faults the MOU for stating that applications will be "process[ed]," instead of saying they will be "'independently' considered or reviewed." Br. 35 (citation omitted). But the MOU uses the term "process" because the point of the agreement is to "facilitat[e] the expeditious *processing* of fee-to-trust applications." Doc. 1-3, at 1 (emphasis added). By contrast, evaluation of applications is governed by 25 C.F.R. 151.10, and final decision-making authority lies with the Regional Director, whose position is *not* supported through reprogrammed funds under the MOU. *See* A-67-68.

The Village also points to Division staff's role in assisting tribes (when requested) with mitigating potential Field Solicitor objections to fee-to-trust applications or formulating responses to comments on an

[11] The operative MOU is the 2008-2010 version that was in place when the challenged Notices of Decision issued. Doc. 34-10, at 24-30. The Village incorrectly cites the 2014-2017 MOU, *see* Doc. 1-3, but its arguments fail even under that version.

application. Br. 35; Doc. 1-3, at 5. Such assistance is consistent with and reflective of Division staff's broader responsibilities to liaise between the Midwest Regional Office, Interior's Office of the Solicitor, and tribes, and to help identify "any deficiencies" in a fee-to-trust application. Doc. 34-10, at 27. But regardless, the Village does not contend that such assistance was requested and provided here—much less in a way that amounted to bias violative of the APA. Nor does the Village appear to dispute that such assistance could inure to a local government's *benefit*—for example, by alerting a tribe to potential "[j]urisdictional problems" or "potential conflicts of land use" raised by their application. 25 C.F.R. 151.10(f).

2. The Division's Review Process

As evidence of purported bias in the Division's review process, the Village cites an email by a BIA Supervisory Realty Specialist to an Environmental Protection Specialist requesting prioritization of the applications at issue here. Br. 44; Doc. 32-12, at 212. This argument fails for general and case-specific reasons. First, as the IBIA explained, "prioritizing a decision is not the same as prejudging the result of that decision." A-63. The Village acknowledges as much. *See* Br. 44

(admitting that prioritization "may not in isolation confirm prejudgment"). Second, the Supervisory Realty Specialist sought prioritization because the *Solicitor's Office in Interior* had requested a final draft of the Regional Director's remand decision within eight days. Doc. 32-12, at 212. The email thus evinces no prejudgment because prioritization had *not* been effectuated at the Nation's behest.

Next, the Village argues that the IBIA "disregarded" evidence of "prejudgment, pecuniary interest, impermissible communications, and conflicts of interest in the [r]ecord." Br. 44. In fact, the IBIA expressly addressed (and rightly rejected) these points. *See* A-63-68. For example, the Village cites correspondence between the Division and the Tribe about the pending fee-to-trust applications and remand proceedings here. Br. 44-46. As the IBIA explained, "[m]any" of these communications "were merely inquiries [by the Nation] about the status of the applications." A-65. Moreover, because agency regulations require staff to communicate with tribes when evaluating applications (*see* A-64), other correspondence involve Division staff requesting information from tribal representatives to facilitate agency review of the still-pending applications (Br. 44-46). Still other correspondence show staff updating colleagues about their review of issues the IBIA identified in its remand order, including the Village's allegations of bias. Br. 44-46. In passing, the Village asserts that the Division sought to reschedule a "Hobart Bias Meeting" with the Nation, and that there had been a planned presentation on the "MOU/BIAS issue" during a Bureau of Indian Affairs conference. Br. 45-46. But the Village cannot say whether the meeting or presentation actually happened, much less demonstrate that the events involved improper participation by, or communications made to, the Nation.

Ultimately, the Village fails to identify anything collusive in the correspondence it cites. But even if it had unearthed some impropriety, the Village's APA claim would still fail because *the Regional Director* remained the final decision maker on the Nation's applications. A-67-68. As the IBIA correctly concluded, the Village could not establish that any of "the Regional Director's interactions with the Nation improperly influenced her decision." A-65.

The Village also raises certain intra-agency communications and practices as alleged evidence of bias. It references internal staff emails that chronicle completed and upcoming steps in the agency's review process, but fails to explain how such coordination among employees reflects "prejudgment" favoring the Nation. Br. 44. The Village also cites the existence of, and staff emails about, performance metrics for processing fee-to-trust applications. Br. 47. But the agency has made no secret of its goal to issue decisions more expeditiously. As the IBIA rightly noted, "processing applications faster is not evidence that [the agency] has prejudged those applications"; rather, "consistent with the Midwest MOU," the agency "could still deny the applications." A-63.

Finally, the Village asserts that the Regional Director does not, in practice, deny any fee-to-trust applications and contends that this reflects bias. The argument fails at its premise. A high approval rate is not, in and of itself, indicative of bias. First, most fee-to-trust acquisitions are uncontroversial, involve the acquisition of fee lands within reservation boundaries (like here), and are not challenged at all. Second, the fact that the Regional Director's notices of decisions all reflect approvals is unremarkable because Interior is not required to publish public notices of denials. *See* 25 C.F.R. 151.12(d)(1) (2013) (only requiring that notices of denials be sent to applicants). Third, as the

IBIA explained, tribes will "withdraw applications that are not likely to be approved, rather than risk[] denial." A-63.

The Village portrays this rationale as "pretextual" because the record allegedly contains no evidence of tribal withdrawals. Br. 36. But *the Village* bears the burden of showing that the IBIA's decision was arbitrary and capricious. *See Board of Trs. of Knox Cnty. Hosp. v. Shalala*, 135 F.3d 493, 502 (7th Cir. 1998). That requires the Village to identify record evidence supporting its claim that the Regional Director's approval rate exhibits bias. The Village's standalone assertion of pretext does not suffice.

3. The Regional Director's Independent Review

The Village also contests the IBIA's holding in the alternative that even if MOU review process had been infirm, the Regional Director's independent review "cured" that infirmity. A-68. The Village disputed this proposition below, arguing there was "no evidence in the record" that the Director independently reviewed the applications. A-68 (citation omitted). But as the IBIA explained, this argument improperly attempted to "reverse the burden of proof": properly allocated, the Village bore the burden of demonstrating that the

Regional Director acted arbitrarily and capriciously by *not* exercising independent review over the applications. A-68-69. The Village's reliance on an alleged absence of evidence on the issue did not suffice. In its opening brief here, the Village suggests the IBIA required it to "prove a negative." Br. 39. Not so. The IBIA simply held the Village to its burden of proof. *See* p. 56, *supra*.

In any event, the administrative record "show[ed] that the Regional Director undertook her own independent review of the[] trust applications, the Village's comments, and the related notices of decision." A-69; *contra* Br. 37. The sheer "comprehensiveness" of the Regional Director's post-remand decision "belie[d] the Village's claim" that no independent review occurred. A-69. On appeal, the Village faults the administrative record for containing no evidence that drafts of the decision were sent to the Director for review. Br. 37. But as the IBIA pointed out, documents relating to such review "ha[d] been withheld as privileged (either under the deliberative process privilege or attorney-client privilege)." A-69 n.24. And "descriptions of the documents set out in the [government's] privilege log" demonstrated that the Regional Director had, in fact, "reviewed the draft notices of decision." A-69 n.24.

The Village further suggests that the Regional Director cannot act "independent[ly]" because she partakes in activities governed by the MOU. Br. 37. But the pertinent MOU provisions simply establish that the Director supervises and works with Division staff and serves on an Oversight Advisory Council established by the MOU. Br. 37-38. None of those functions is inconsistent with the Director independently reviewing applications submitted for her consideration. Indeed, under the presumption of regularity, this Court presumes the Director did so. *See Busboom Grain Co. v. ICC*, 830 F.2d 74, 75 (7th Cir. 1987) (explaining that "[a] strong presumption of regularity supports any order of an administrative agency"); *see also* A-69 (invoking the presumption of regularity). The Village offers no evidence specific to the Director sufficient to rebut this presumption. *See United States v. Zuniga*, 767 F.3d 712, 720 (7th Cir. 2014) (applying the presumption absent "evidence to the contrary").

4. The 2006 IG Report

The Village contends that the IBIA's affirmance was arbitrary and capricious because the Regional Director failed to fully comply with the IBIA's remand order. Specifically, it argues that the Director's review of a 2006 report by Interior's Office of Inspector General was deficient. That charge is baseless.

a. In 2000, the Bureau of Indian Affairs' Pacific Regional Office entered into an MOU with a group of California tribes that, among other things, reprogrammed Tribal Priority Allocation funds to support staff positions that would focus primarily on processing fee-to-trust applications. Doc. 1-5, at 2-3. Four years later, the Midwest Regional Office proposed entering into a similar agreement—a precursor to the MOU at issue here—and asked Interior's Office of the Solicitor (SOL) to review a draft MOU. Doc. 1-5, at 12.

In 2006, SOL issued an opinion addressing the Pacific Regional Office's and Midwest Regional Office's MOUs. It concluded that the MOUs neither violated federal law, nor any government ethics rules. Doc. 1-5, at 12-13.

A year later, Interior's Office of Inspector General (IG) issued a report that summarized an investigation into the Pacific Regional Office's MOU and also briefly discussed the Midwest Regional Office's MOU and the SOL opinion. Doc. 1-5, at 2-13. The report identified no instance of actual bias under the MOUs and found no violation of federal law. *See* Doc. 1-5, at 2-13. It did, however, recommend discontinuation of the Pacific Regional Office's MOU because certain provisions could be interpreted as affording participating tribes influence over staffing and funding, thus giving rise to a "conflict of interest." Doc. 1-5, at 2. The report also documented distinctions between that MOU and the Midwest Regional Office's MOU, which included a provision clarifying that staff tasked with processing fee-to-trust applications are federal employees governed by Title 5 of the United States Code. Doc. 1-5, at 43.

During the initial proceedings before the IBIA in this case, the Village raised allegations of bias and relied on, among other things, the IG Report. A-47-48; Doc. 32-4, at 44-45. As discussed, the IBIA remanded for the Regional Director to "address the Village's allegations of bias as well as the outcome of the IG investigation and its relevance, if any, to the Village's allegations." *Village of Hobart v. Acting Midwest Regional Director*, 57 IBIA 4, 16 (May 9, 2013). The IBIA also directed the Director to "discuss any corrective actions that may have been taken in response to the IG investigation prior to [the application approvals] at issue, if relevant to the Village's allegations of bias." *Ibid.*

In her remand decision, the Regional Director explained that the IG report had "no bearing" on the Village's bias claim. Doc. 32-4, at 47. The MOUs reviewed by the IG had already been "replaced by restructured MOUs," and changes incorporated into the Midwest Regional Office's MOU were specifically designed to "ensure[] against the appearance of bias or conflict of interest." Doc. 32-4, at 47, 50. Additionally, the IG had "found no instances of actual bias in the [agency's] processing of fee-to-trust applications," and it "agreed" with SOL that the MOUs did not conflict with federal laws or government ethics rules. Doc. 32-4, at 47. The IG report thus identified no "corrective actions to be taken beyond recommending that [the agency] restructure the MOUs to prevent the appearance of bias," which had already occurred. Doc. 32-4, at 50.

The Village appealed the Regional Director's decision and contested her compliance with the IBIA's remand order. A-70. The IBIA rejected the Village's arguments. A-70.

b. The Village's arguments are no more persuasive here on appeal. It faults the Regional Director for reviewing a version of the IG report that lacked the report's attachments. Br. 40. But as the IBIA explained, its "order required the Regional Director to review '*the outcome* of the IG investigation,' not the documents on which it was based." A-70 (emphasis added). Indeed, the order's instruction to discuss any "corrective actions" taken in response to the IG's investigation, *Village of Hobart*, 57 IBIA at 16, reflected the IBIA's recognition that the modifications to the Midwest Regional Office's MOU could be relevant when assessing the Village's bias claim.

The Village thus errs in arguing that, by directing the Regional Director to review the "outcome" of the IG's investigation, the IBIA required the Director to also review the report's "underlying materials." Br. 40. The IBIA rejected that reading of its own order. A-70. And the Village's interpretation ignores the order's focus on updated practices and protocols at the Midwest Regional Office, and not the investigative materials the IG compiled seven years prior.[12]

Undaunted, the Village contends that review of the report's attachments was necessary for the Regional Director to "adequately consider" the outcome of the IG's investigation and the Village's allegations of bias. Br. 41. However, the investigation's outcome was that no instances of bias or violations of federal law were identified and no specific corrective actions were recommended. The Village does not explain why review of the report's attachments was necessary for evaluating that outcome. As for the allegations of bias, the Village argues that "the IBIA ignored critical findings from the" SOL opinion, which had been attached to the report. Br. 41. However, the IBIA did

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[12] The Village perceives inconsistency between the IBIA's conclusion that its remand order did not require review of the IG's attachments and the IBIA's unwillingness to rely on the summary of the SOL opinion in the IG's report. Br. 40-41. No conflict exists. Those portions of the IBIA's opinion respond to different questions: whether the Regional Director sufficiently complied with the remand order, and whether the MOU created an impermissible conflict of interest. A-66 n.22, 70. Moreover, the IBIA's amenability to deciding the conflict-of-interest issue *without* access to the full SOL opinion confirms the IBIA's view that the opinion was unnecessary for evaluating the Village's allegations of bias. *See* pp. 62-63, *supra*.

not order the Director to review the SOL opinion; rather, it ordered the Director to address "the outcome of the *IG investigation*." *Village of Hobart*, 57 IBIA at 16 (emphasis added). Although SOL recommended that the MOUs be discontinued (Doc. 1-5, at 13), the IG did not endorse that recommendation. Rather, the Director read the report to suggest that the MOUs could be restructured to eliminate any appearance of bias. Doc. 32-4, at 50.

The Village acknowledges that the MOUs were indeed revised. Br. 42; *see also* A-67 (suggesting that the revisions sought to address the IG's concerns). But it deems the changes inadequate because "the core features" of the Midwest Regional Office's MOU allegedly remained "unchanged." Br. 42. Even if this were true, it does not demonstrate that the IBIA's decision was arbitrary or capricious. First, the adequacy of the MOU revisions is irrelevant to whether the IBIA's remand order required the Regional Director to review the IG report's attachments.

Second, the Regional Director explained that the revisions mitigated the "appearance of bias" by emphasizing, among other things, that the MOU advances Congress's goals of supporting tribal self-determination; MOU-funded positions are supervised by agency personnel outside the Division; and only agency officials vested with delegated authority exercise inherent federal functions. Doc. 32-4, at 47-48, 50-51. The Village's disagreement about the significance of these changes does not render the Director's analysis arbitrary or capricious. *See Prometheus Radio Project*, 592 U.S. at 423 (explaining that "a court may not substitute its own policy judgment for that of the agency," and an agency simply needs to have "reasonably considered the relevant issues and reasonably explained [its] decision").[13]

C. The IBIA's order was not contrary to law.

The Village's brief arguments for why the IBIA's order was contrary to law are similarly meritless. First, the Village suggests that the MOU somehow conflicts with the "discretionary decision-making

[13] The Village suggests in passing that the Regional Director should not have been permitted to consider, in the first instance, the Village's allegations of bias. Br. 48 (characterizing her review as "self-serving"). The Village did not raise this argument in the district court (Doc. 57, at 11-24; Doc. 70, at 7-20), and it is waived on appeal, *see Fednav Int'l Ltd. v. Continental Ins. Co.*, 624 F.3d 834, 841 (7th Cir. 2010). Even if the Court considered the argument, it fails because none of the cases cited by the Village involves administrative review of an allegedly biased agency adjudication. *See* Br. 48.

process" of considering the criteria for fee-to-trust applications in 25 C.F.R. 151.10. Br. 50. The Village does not, however, identify any portion of the MOU that precludes that process. *See* Br. 50-52.

Second, the Village appears to argue that the IBIA's decision was contrary to law because it only required the Regional Director to have "considered" the Section 151.10 criteria. Br. 50-52. In the Village's view, permitting the Director to take land into trust, even if evaluation of those criteria reveals "harm[]," transforms the Section 151.10 analysis into an "empty formula" that "guarantees approval." Br. 51.

For multiple reasons, the IBIA's review of the Regional Director's Section 151.10 analysis was not contrary to law.[14] The IBIA straightforwardly applied longstanding IBIA case law, which holds that a Director only needs to "consider" the Section 151.10 criteria and may approve a fee-to-trust application even if taking land into trust may adversely affect a state or locality. A-73-74 (quoting *Roberts Cnty. v. Acting Great Plains Regional Director*, 51 IBIA 35, 46 (2009)); *see also Roberts Cnty.*, 51 IBIA at 46 (explaining that "[t]he standard of review

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[14] The Village does not challenge the Regional Director's Section 151.10 analysis as arbitrary or capricious. *See* Br. 50-52.

in trust acquisition cases is well established" and collecting cases). This standard derives from the regulatory text, which directs a Director to "consider" specified criteria. 25 C.F.R. 151.10. The agency's interpretation of what Section 151.10 requires is entitled to deference. *See County of Charles Mix v. Department of Interior*, 674 F.3d 898, 904 (8th Cir. 2012) (deferring to the Secretary's interpretation of Section 151.10).

Likewise, the Supreme Court and other courts of appeals have described the agency's obligation using this regulatory language. *See City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 221 (2005) (explaining that "the Secretary must consider" the Section 151.10 criteria); *see also Cherokee Nation v. Bernhardt*, 936 F.3d 1142, 1162 (10th Cir. 2019); *Citizens Against Casino Gambling in Erie Cnty. v. Chaudhuri*, 802 F.3d 267, 284 (2d Cir. 2015); *Patchak v. Salazar*, 632 F.3d 702, 706 (D.C. Cir. 2011); *South Dakota v. Department of Interior*, 487 F.3d 548, 551, 553 (8th Cir. 2007); *Lummi Indian Tribe v. Whatcom Cnty.*, 5 F.3d 1355, 1359 (9th Cir. 1993).

The Village cites no authority demonstrating that the IBIA's approach was contrary to law. Instead, it contends that mere review of the Section 151.10 criteria should not suffice when a fee-to-trust application raises a "significan[t] . . . problem or concern." Br. 50-52. The Village might prefer that Section 151.10 require something more than a Regional Director's "consider[ation]." 25 C.F.R. 151.10. But disagreement over how the IRA's regulatory regime should operate does not establish an APA violation. *See Prometheus Radio Project*, 592 U.S. at 423.[15]

III. The district court did not abuse its discretion by denying extra-record discovery.

A. Standard Of Review

"As a general rule, appellate courts leave discovery to the sound discretion of the district court." *Guilbeau v. Pfizer Inc.*, 880 F.3d 304, 318 (7th Cir. 2018). Accordingly, this Court reviews denials of extra-

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[15] The Village failed to raise below, and thus has waived on appeal, its argument that the Regional Director's approvals were contrary to law because Section 5 does not permit a Director to take land into trust when an Indian tribe previously acquired it. Br. 49; *see also* Doc. 57, at 11-25; Doc. 70, at 7-24; *Fednav Int'l*, 624 F.3d at 841. Regardless, the argument fails. Section 5 authorizes the Secretary to acquire land in a variety of ways—including through "relinquishment," "gift," or "assignment"—regardless of who the prior owner might be (here, an Indian tribe) and how the owner obtained it (here, through purchase). 25 U.S.C. 5108; *see also Chase v. McMasters*, 573 F.2d 1011, 1015-1016 (8th Cir. 1978) (holding that Section 5 permits fee-to-trust conversion of lands conveyed by an individual Indian).

record discovery for abuse of discretion. *Little Co. of Mary Hosp. v. Sebelius*, 587 F.3d 849, 856 (7th Cir. 2009). "A court abuses its discretion only when no reasonable person could agree with the decision to deny relief." *Barrington Music Prods., Inc. v. Music & Arts Ctr.*, 924 F.3d 966, 968 (7th Cir. 2019) (citation omitted).

B. The Village cannot show that no reasonable person would agree with the district court's decision.

A party seeking extra-record discovery on an APA claim must satisfy a "demanding standard." *Gray v. Zatecky*, 865 F.3d 909, 912 (7th Cir. 2017). The district court did not abuse its discretion when it found that the Village failed to satisfy that standard.

1. In an APA case, "a court is ordinarily limited to evaluating the agency's contemporaneous explanation in light of the existing administrative record." *Department of Com. v. New York*, 588 U.S. 752, 780 (2019). This constraint "reflects the recognition that further judicial inquiry into 'executive motivation' represents 'a substantial intrusion' into the workings of another branch of Government and should normally be avoided." *Id.* at 780-781 (citation omitted).

The Supreme Court has recognized, however, "a narrow exception to the general rule against inquiring into 'the mental processes of administrative decisionmakers.'" *New York*, 588 U.S. at 781. Specifically, if a plaintiff makes a "strong showing of bad faith or improper behavior," then "such an inquiry may be warranted and may justify extra-record discovery." *Ibid.* (citation omitted); *see also Citizens for Appropriate Rural Roads v. Foxx*, 815 F.3d 1068, 1082 (7th Cir. 2016) (requiring "a significant showing . . . of bad faith or an incomplete record" to obtain discovery on an APA claim).

2. Given this required showing and the deferential standard of review, the Village has a doubly difficult task. It must show that no reasonable person could agree with the district court's conclusion that the Village failed to make a strong showing of bad faith or improper behavior. None of the Village's arguments come close to satisfying this obligation. *See South Dakota v. Department of Interior*, 423 F.3d 790, 802-803 (2005) (deferring to the district court's conclusion that supplementation of the record was unnecessary in an APA case challenging approval of a Section 5 fee-to-trust application).[16]

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[16] The Village does not contest the district court's denial of discovery on its constitutional challenge to Section 5. A-40-41.

First, the Village asserts that "the MOU's terms alone demonstrate bad faith." Br. 53. As discussed above, however, the MOU does not bias staff or cause prejudgment of applications. *See* pp. 50-56, *supra*. And as the district court explained, "[t]he mere existence of the MOU . . . is not enough to justify allowing the Village to engage in extra-record discovery" because any argument that the MOU's "procedures and framework" violate the APA can be adjudicated "based on the administrative record." A-40. The Village protests that allegedly biased Division staff bear responsibility for preparing the administrative record. Br. 53. But the employee who compiled the administrative record certified, under penalty of perjury, that it contains "all information and documents" on which the Regional Director relied when issuing her decision. Doc. 32-2, at 4. Nothing in the MOU displaces the presumption of regularity afforded to that certification. *See Trongone v. Commissioner of Internal Revenue*, No. 25-1050, 2026 WL 1700981, at *6 (D.C. Cir. June 12, 2026). Accordingly, because the court's denial of extra-record discovery was "within [a] range of permissible options . . . under the given circumstances," there was no abuse of discretion. *United States v. Isaacs*, 593 F.3d 517, 525 (7th Cir. 2010) (citation omitted).

Second, the Village contends that the "evidence of coordination, prejudgment, and outcome driven conduct" discussed earlier in its brief "raise[s] serious questions about whether the Record is complete." Br. 53. Again, that evidence fails to demonstrate any bias or partiality. *See* pp. 53-55, *supra*. As the district court explained, the Village's "conclusory allegation" to the contrary based on "an allegedly biased fee-to-trust application process . . . does not constitute the strong showing of bad faith or improper behavior needed to permit extra-record discovery." A-41.

Third, the Village raises "questions" about the Regional Director's independent review and asserts that the administrative record's "silen[ce]" on the scope of her review required "discovery to probe that silence." Br. 53-54. In fact, the record is not silent—rather, it "show[s] that the Regional Director undertook her own independent review of the[] trust applications." A-69; *see also* pp. 56-58, *supra*. But even if the record were silent, the Village's questions cannot obviate the need for a strong showing of bad faith, and none was made here.

Fourth, the Village cites a finding in the IG's report that the MOU created a conflict of interest. Br. 55. However, what the IG did *not* find—namely, any "instances of actual bias in the [agency's] processing of fee-to-trust applications" (Doc. 32-4, at 47)—is more pertinent. Because the report found no examples of bias, it cannot demonstrate that the district court abused its discretion.

Fifth, the Village broadly contends that evidence of bias will often "remain 'behind-the-scenes'" and not appear in an agency's administrative record. Br. 55. However, the Village can only speculate about whether anything like that occurred here. "Such speculation . . . does not constitute the 'strong showing of improper behavior'" needed to obtain "discovery outside the administrative record." *Hall v. Norton*, 266 F.3d 969, 978 (9th Cir. 2001). Rather, actual "evidence of wrongdoing" or bad faith is required, *ibid.*, and the Village provided none.

Finally, the Village cites (Br. 54-56) a variety of cases allegedly supportive of its position. However, each case is inapposite or easily distinguishable and thus cannot establish any abuse of discretion. *See New York*, 588 U.S. at 782 (finding extra-record discovery justified based on materials that the government agreed should have been part of the administrative record); *Dopico v. Goldschmidt*, 687 F.2d 644, 654 (2d Cir. 1982) (same where the documents that formed "the very basis for federal decision-making" were "conspicuously absent" from the administrative record, thus raising a "strong suggestion" that the record was incomplete); *Porter v. Califano*, 592 F.2d 770, 782-784 (5th Cir. 1979) (review of administrative adjudication where the agency's factfinding procedures were inadequate); *Cook Cnty. v. Wolf*, 461 F. Supp. 3d 779, 795-796 (N.D. Ill. 2020) (permitting extra-record discovery where the plaintiff made "a strong showing" that the agency's final rule was motivated by "a substantial and impermissible reason not reflected in the administrative record," and the government "could not offer a plausible explanation for" the absence of records mentioned in the rule); *Manker v. Spencer*, No. 3:18-CV-372, 2019 WL 5846828, at *19 (D. Conn. Nov. 7, 2019) (same for claim challenging an agency's "systemic failures to implement the law and official directives or guidance," as opposed to "a discrete adjudication"); *Grill v. Quinn*, No. CIV S-10-0757, 2012 WL 174873, at *4-5 (E.D. Cal. Jan. 20, 2012) (permitting "[p]aper discovery" where the court found "a reasonable inference" that the agency action was motivated by "some other unstated, but important, reason").

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Circuit Rule 32(c) because it contains 13,993 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Jason Lee
JASON LEE
Attorney

Date: July 16, 2026

☑

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ADDENDUM

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25 U.S.C. 5108

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: Provided, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

25 C.F.R. 151.10 (2010)

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30–day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)