

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO
INDIANS,

Plaintiff,

v.

No. 1:26-cv-02814

UNITED STATES DEPARTMENT OF
THE INTERIOR,

DOUGLAS BURGUM, in his official
capacity as Secretary of the U.S.
Department of the Interior,

and

WILLIAM KIRKLAND, in his official
capacity as Assistant Secretary –
Indian Affairs, U.S. Department of the
Interior

Defendants.

CALIFORNIA GAMING ASSOCIATION'S AMICUS BRIEF
IN SUPPORT OF DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTEREST OF *AMICUS CURIAE*

The California Gaming Association (“CGA”) is a trade association made up of over 90% of California’s state-licensed cardrooms.¹ CGA members generate approximately \$5.6 billion of economic impact, 20,000 jobs, and \$500 million of tax revenue for the communities in which they operate. CGA members are also one of the leading sources of general fund revenue used by many local jurisdictions to provide essential community services.

CGA’s mission includes monitoring legislation and regulation and taking legal action to protect its members’ interests. CGA has filed *amicus* briefs in a number of cases that implicate these interests, including an earlier iteration of this dispute. *See, e.g.,* Amicus Br. of Cal. Gaming Ass’n. (Doc. 109), *Scotts Valley Band of Pomo Indians v. Burgum*, No. 25-cv-958 (D.D.C. Aug. 25, 2025).

Here, CGA and its members have an interest in the proper standard of review under the Administrative Procedure Act being applied to important government decisions like the Department of the Interior’s reconsideration of its 2025 Indian lands decision. More broadly, CGA and its members are committed to upholding the fundamental constitutional principle of equality before the law.

The decision in *Scotts Valley Band of Pomo Indians v. Department of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (“*Scotts Valley I*”), appeared to flout that principle by suggesting that the Indian canon of construction might justify

¹ No counsel for any party authored this brief in whole or in part, and no party or counsel for any party contributed money to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

invalidating a reasoned agency decision that balanced competing tribal interests to resolve a deeply contested factual dispute. *See id.* at 165. The Department’s reconsidered decision correctly explains that the Indian canon “has no applicability to the weighing of evidence, for example, regarding occupancy or use of a given plot of land.” *See* Kirkland, Assistant Sec’y, Indian Affs., *Scotts Valley III ILO* at 31, U.S. Dep’t of Interior (July 30, 2026), perma.cc/PMB3-5TGR. Relying on an erroneous interpretation of *Scotts Valley I*, *see* Compl. ¶¶8, 30, 40, 47, 49, *Scotts Valley* now asks the Court to set aside the Department’s reasoned decision by injecting the Indian canon into factual determinations where it does not belong. *Contra Scotts Valley III ILO* at 31 (rejecting argument that executive branch agencies must give tribes “the benefit of the doubt when faced with necessarily incomplete or ambiguous documentation” (cleaned up)). This Court should decline the invitation.

INTRODUCTION AND SUMMARY OF ARGUMENT²

In March 2025, the Department temporarily rescinded a prior Indian lands decision issued by then-Secretary Haaland just days before the inauguration of the new administration. *Scotts Valley Band of Pomo Indians v. Burgum*, 808 F. Supp. 3d 1, 9-12 (D.D.C. 2025) (“*Scotts Valley II*”). The previous administration’s last-minute decision was itself a reversal from the Department’s previous position in 2019, a reversal driven in part by language in *Scotts Valley I* that threatened to create a tribes-always-win rule for agency adjudications of contested facts. *See id.* at 10. Many

² Aside from the issues discussed in this *amicus* brief and CGA’s previous *amicus* brief in *Scotts Valley II*, CGA takes no position through its briefs on any other legal questions regarding *Scotts Valley*’s efforts to engage in gaming operations on the parcel at issue.

other tribes that already possess land and operate casinos swiftly challenged then-Secretary Haaland’s last-minute ruling, arguing that the decision violated the law and had been made without considering all the relevant evidence. *See Yocha Dehe Wintun Nation v. U.S. Dep’t of Interior*, No. 25-cv-867 (D.D.C. Mar. 24, 2025); *United Auburn Indian Cmty. v. U.S. Dep’t of Interior*, No. 25-cv-873 (D.D.C. Mar. 24, 2025); *Lytton Rancheria of Cal. v. U.S. Dep’t of Interior*, No. 25-cv-1088 (D.D.C. Apr. 10, 2025).

After reconsidering the issue on a complete factual record, the Department fully revoked the 2025 decision and concluded that the “evidence does not support the Band’s claim to a significant historical connection” to the land at issue. *Scotts Valley III ILO* at 32. Scotts Valley now challenges that revocation, asserting that *Scotts Valley I* and the Indian canon of construction require resolving factual “ambiguities and reasonable inferences ... in the Band’s favor.” Mem. in Supp. of Mot. for Preliminary Injunction at 18.

Scotts Valley is wrong. Although courts have applied the Indian canon when interpreting genuinely ambiguous treaties and statutes,³ the canon has no application when an executive agency is tasked with weighing heavily contested evidence and making policy determinations based on the government’s analysis of the facts. Thus, a tribe cannot weaponize the canon to force the government’s hand

³ As the D.C. Circuit recently confirmed, the Indian canon has “*no application* where the relevant law is unambiguous.” *Ute Indian Tribe of the Uintah & Ouray Indian Rsrv. v. United States*, 2026 WL 2211278, at *6 (D.C. Cir. July 31, 2026) (emphasis added).

whenever it disagrees with the outcome of an agency’s reasoned decisionmaking. To hold otherwise would turn the APA’s arbitrary-and-capricious standard on its head and place courts, not democratically accountable executive officials, in the policymaking role the Framers (and the drafters of the APA) reserved for the political branches. *See, e.g., Sierra Club v. FERC*, 153 F.4th 1295, 1304-05 (D.C. Cir. 2025) (reiterating that, under the APA, “a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained”). And permitting tribes to use the Indian canon as a thumb on the scale in agency factfinding is especially inappropriate given the scant textual and historical support for even the canon’s limited role in resolving certain legal questions. The Court should deny Scotts Valley’s motion.

ARGUMENT

I. The Indian canon does not entitle Scotts Valley to a preliminary injunction.

The Department’s reconsideration decision corrected an error: the previous administration’s last-minute decision failed to consider all the relevant evidence and gave undue weight to language in *Scotts Valley I* regarding the application of the Indian canon to agency factfinding. *See Scotts Valley III ILO* at 2-3. *Scotts Valley I*’s discussion of the canon, read maximally as the tribe now insists is required, would conflict with this Court’s precedent and create an entirely unjustified new rule. As this Court has recognized, the Indian canon has no place in judicial review of agency factfinding or policymaking. *See Mashpee Wampanoag Tribe v. Bernhardt*, 466 F. Supp. 3d 199, 216-17 (D.D.C. 2020). Even if the canon theoretically could apply,

courts should be especially cautious when evaluating requests to extend the Indian canon beyond its traditional province in the treaty context given the lack of textual and historical support for a free-floating substantive canon in favor of tribes.

Scotts Valley argues that *Scotts Valley I*'s discussion of the Indian canon compels a ruling in its favor. Mem. in Supp. of Mot. for Preliminary Injunction at 8, 11-12, 18. But as CGA has already explained (and the federal government consistently agreed), reading *Scotts Valley I* to extend the Indian canon to agency factfinding and policymaking determinations would be clearly erroneous. Even the previous administration's decision paid lip service to the correct rule, that the Indian canon "has no applicability to the weighing of evidence." Garriott, Principal Deputy Assistant Sec'y, Indian Affs., *Scotts Valley II ILO* at 3, U.S. Dep't of Interior (Jan. 10, 2025), perma.cc/QX83-9QZW. To the extent the 2025 decision, despite that disclaimer, arguably applied the Indian canon to facts, the Department was right to reconsider and ultimately revoke it. Either way, nothing in *Scotts Valley I* required the Department to commit clear legal error by tipping the scales in Scotts Valley's favor.

On reconsideration, the Department determined that the "evidence does not support the Band's claim to a significant historical connection to the Parcel." *Scotts Valley III ILO* at 32. Consistent with its position throughout this litigation, the Department reiterated that "the Indian canon does not compel a different result" because the canon cannot usurp an agency's reasoned policymaking judgment. *Id.* Scotts Valley argues that the Department erred by not giving the tribe the benefit of

the doubt on the facts. But when reviewing adjudicative factfinding, courts examine whether the agency considered the relevant data and articulated a satisfactory explanation for its decision, only setting aside the agency’s decisionmaking when it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A); *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (clarifying that “judicial review of agency policymaking and factfinding [is] deferential”). Correcting the record and applying the appropriate legal standard is not arbitrary or capricious. Neither is resolving a contested factual dispute in a manner adverse to one of several interested tribes.

In sum, Scotts Valley cannot use the Indian canon to avoid unfavorable facts, force the Department to resolve ambiguities in the record in its favor, or as a basis for arguing that the only reasoned decision is one in which one of several interested tribes happens to prevail.

A. The Indian canon does not apply to agency factfinding and policymaking determinations.

“Substantive canons are rules of construction that advance values external to a statute.” *Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring) (citing Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 117 (2010)). Because these dice-loading rules are strong medicine, they are limited to statutory interpretation if they apply at all. *See United States v. Gonzalez*, 407 F.3d 118, 124-25 (2d Cir. 2005). Indeed, courts have explained that even the rule of lenity—perhaps the paradigmatic substantive canon—does not apply to factfinding and is “cabined to resolve ambiguous questions of law.” *Id.* at 124. Accordingly, “when an

agency exercises discretion granted by a statute, judicial review is typically conducted under the Administrative Procedure Act’s deferential arbitrary-and-capricious standard. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 179-80 (2025). “Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained.” *Id.*

This Court has already explained that the Indian canon has no role once statutory interpretation ends. Thus, when a tribe “invoke[d]” the canon to “suggest that the Secretary’s application of” a settled administrative test “should be favorable to the Tribe,” this Court rejected the argument because the tribe had “misunderst[ood] the canon.” *Mashpee Wampanoag Tribe*, 466 F. Supp. 3d at 216. Like any canon of construction, the Indian “canon’s role is complete” once the outstanding questions of “statutory interpretation [are] resolved.” *Id.* at 217. So once a court determines a statute’s meaning, the agency’s factfinding and policymaking determinations are subject only to the APA’s deferential arbitrary and capricious standard. *Id.*

The careful analysis in *Mashpee Wampanoag Tribe* bears little resemblance to Scotts Valley’s gloss on *Scotts Valley I*. The *Scotts Valley I* court expressly held that the Department “did not act outside of its statutory authority ... when it promulgated [25 C.F.R. §292.12’s requirement that] tribes ... demonstrate a ‘significant historical connection’ for purposes of the restored lands exception.” 633 F. Supp. 3d at 171. It also held that the Department’s decision denying Scotts Valley a restored-lands determination “provided a reasoned basis for its [application of §292.12], which was based on the record.” *Id.* at 165. In other words, the Department’s original decision

(reaching the same result as the one being challenged today) could not “be said to be conclusory, unexplained, or unsupported,” and “from a pure administrative law perspective, [its] application of [25 C.F.R. §292.12] to the facts presented by Scotts Valley comport[ed] with the APA.” *Id.*

Ignoring all of this, which would strongly suggest the Department’s present decision reaching the *same result* is equally reasoned and reasonable, Scotts Valley focuses on a passage in *Scotts Valley I* where the Court assessed the Department’s “reasoned basis for its decision” “through the lens of the Indian canon of construction.” *Id.* Armed with the Indian canon, the *Scotts Valley I* court second-guessed many of the factual findings it had just admitted were reasonably based on record evidence. *Id.* at 165-68. Indeed, the court declared the Department’s factfinding and policymaking discretion violated the APA simply because there was “material in the [record] to support a finding in the [tribe’s] favor if all inferences [were] resolved to its benefit,” yet the Department, in its discretion, chose to “devalue” that “material” relative to other evidence in the record. *Id.* at 165, 168, 171.

When the government later moved for reconsideration, the *Scotts Valley I* court doubled down. It reaffirmed its erroneous view that the Indian canon was relevant to “assessing whether the agency’s decision about the restored lands exception ... was reasonable and in accordance with law.” Transcript of Hr’g on Mot. for Reconsideration (Doc. 69) at 17:1-4, *Scotts Valley I* (D.D.C. May 23, 2023). The court also confirmed that it was reviewing the agency’s factfinding and policymaking determinations by

“[r]esolving all inference and doubts in favor of the Band.” *Id.* at 17:6-15, 18:1-8, 34:9-12.⁴

That is not the law. Congress has “mandate[d] that judicial review of agency policymaking and factfinding be deferential.” *See, e.g., Loper Bright*, 603 U.S. at 392. As this Court and the Supreme Court have both recognized, that deference leaves no room for judicial policy preferences like the Indian canon to place a thumb on the scale. *See Mashpee Wampanoag Tribe*, 466 F. Supp. 3d at 216-17; *cf. Seven Cnty. Infrastructure Coal.*, 605 U.S. at 179-80.

Indeed, the 2025 decision acknowledged as much: “The Indian canon is a tool of construction, requiring ambiguous *laws* to be interpreted in favor of the Indians. It has no applicability to the weighing of evidence, for example, regarding occupancy or use of a given plot of land.” *Scotts Valley II ILO* at 10. Accordingly, the Department correctly revoked the 2025 decision after, upon reconsideration of a complete factual record, concluding that the weight of the evidence does not suggest that the Band’s ancestors were baptized at the Mission San Francisco Solano or that the Band

⁴ As the government notes—at points during the reconsideration hearing, the *Scotts Valley I* court made statements arguably embracing a more limited version of the Indian canon closer to (though still divorced from) its origin as a rule of treaty interpretation. *See* Preliminary Injunction Opp. at 21. This Court can resolve any tension by interpreting the more limited statements as controlling, or by concluding that this aspect of *Scotts Valley I*’s discussion of the Indian canon is clearly erroneous and thus not law of the case. *See Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988); *Laffey v. Nw. Airlines, Inc.*, 740 F.2d 1071, 1082 (D.C. Cir. 1984); *AcryliCon USA, LLC v. Silikal GmbH & Co.*, 46 F.4th 1317, 1325 (11th Cir. 2022) (“[C]lear legal error is an exception to the law-of-the-case doctrine.”). The result is the same: The Indian canon does not apply to agency factfinding or policymaking determinations, in this case or any other. *Mashpee Wampanoag Tribe*, 466 F. Supp. 3d at 216-17.

demonstrated occupancy or subsistence use in the vicinity of the Parcel. *Scotts Valley III ILO* at 31.

The Indian canon does not govern adjudicative factfinding—and it certainly does not govern this Court’s standard of review. “When the best reading of a statute ... is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and ... ensur[e] the agency has engaged in reasoned decisionmaking within those boundaries.” *Loper Bright*, 603 U.S. at 395 (cleaned up). In other words, courts interpret the law and leave agencies to weigh the facts. The APA does not remotely suggest that agencies evaluating unsettled facts should apply the Indian canon to tilt the scales in favor of a tribe. Indeed, it affirmatively prohibits courts from invoking their own sense of good policymaking to second guess those determinations. *See* 5 U.S.C. §706.

B. Applying the Indian canon beyond its origin as a rule of treaty interpretation is inappropriate.

Expansion of the Indian canon to factfinding or review of an agency’s policy judgments is especially unwarranted. A growing body of judicial and academic commentary demonstrates that even the more limited use of the canon in the statutory interpretation context has little textual or historical support. These serious concerns weigh heavily against *expanding* the doctrine to any new contexts.

What courts sometimes call “the Indian canon” is an atextual interpretive principle suggesting that certain “statutes dealing with the Indians must be construed in their favor.” Barrett, *Substantive Canons*, 90 B.U. L. Rev. at 151. But

despite the claim to simplicity, the canon’s origins are confounding. The Indian canon “began in the treaty context as essentially a rule of contract interpretation” that “instruct[ed] courts to construe treaties in favor of the less sophisticated party to them.” *Id.* at 152; *see also Arizona v. Navajo Nation*, 599 U.S. 555, 572 (2023) (Thomas, J., concurring) (collecting early cases). But the Indian canon “jumped without discussion from the interpretation of treaties to the interpretation of statutes” sometime in the late nineteenth century after Indian treaties began to fall out of favor. Barrett, *Substantive Canons*, 90 B.U. L. Rev. at 152. To patch this hole, courts have gestured at “the unique trust relationship” between the federal government and the Indians as the source of pro-Indian “canons of construction.” *Oneida Cnty. v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 247 (1985).

But there is no textual or historical support for the idea of a trust relationship between the federal government and the Indians, much less a corresponding canon of construction. “To this day, it remains unclear how the ‘trust relationship’ could justify freestanding pro-Indian canons that authorize courts to depart from the ordinary rules of statutory interpretation.” *Navajo Nation*, 599 U.S. at 572 (Thomas, J., concurring). “The text of the Constitution (which mentions Indians only in the contexts of commerce and apportionment) is completely silent on any such trust relationship.” *Id.* at 573 (citing U.S. Const. art. I, §§2, 8; amend. XIV, §2).

Proponents have traced the trust relationship (if not the Indian canon) to the Supreme Court’s analogy that the relationship between the tribes and the federal government “resembles that of a ward to his guardian.” *Cherokee Nation v. Georgia*,

30 U.S. (5 Pet.) 1, 17 (1831). That statement was dicta. *See Navajo Nation*, 599 U.S. at 573 (Thomas, J., concurring). But, in any event, because Congress uses the trust relationship to justify exercising plenary power over Indian affairs, it is “incongruous to use Indians’ trust in the Government as both the basis for a power that can restrict tribal rights and canons of interpretation that favor Indians.” *Id.*

Other jurists have expressed similar doubts about the Indian canon and policy-based substantive canons writ large. *See Barrett, Substantive Canons*, 90 B.U. L. Rev. at 151 (casting doubt on the historical pedigree of the Indian canon given the “paucity of nineteenth century cases applying” it); *Biden*, 600 U.S. at 509 (Barrett, J., concurring) (explaining that “[w]hile many strong-form [substantive] canons have a long historical pedigree, they are ‘in significant tension with textualism’ insofar as they instruct a court to adopt something other than the statute’s most natural meaning”); Oral Arg. Tr. 60:13-14, *Ysleta del Sur Pueblo v. Texas*, No. 20-493 (U.S. Feb. 22, 2022) (Justice Kagan: “Maybe we should just toss [substantive canons] all out, you know?”); *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 703 n.3 (2022) (pointedly declining to rely on the Indian canon); *West Virginia v. EPA*, 597 U.S. 697, 779-80 (2022) (Kagan, J., dissenting) (arguing that “special canons” should not “magically appear as get-out-of-text-free cards” and “[p]revent agencies from doing important work”); *Learning Res., Inc. v. Trump*, 607 U.S. 229, 302 (2026) (Gorsuch, J., concurring) (“Strong-form substantive canons—canons instructing a judge to adopt an inferior-but-tenable reading—veer beyond interpretation and into policymaking.” (cleaned up)).

As a result, this Court should be skeptical whenever a party invokes the Indian canon to secure a judicial thumb on the scale. “Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality.” *Loper Bright*, 603 U.S. at 399. But, under Scotts Valley’s view, the Indian canon acts as an inexorable command to “plac[e] a thumb on the scale in favor of ... tribes,” even when there is no compelling textual or historical justification. *Navajo Nation*, 599 U.S. at 570 (Thomas, J., concurring). At the very least, this Court can take the canon’s scant history into account to confirm that it does not allow unelected judges to override agency factfinding and policymaking determinations just because doing so would be favorable to a tribe.

CONCLUSION

The Department reconsidered and then revoked an eleventh-hour Indian lands determination that was based on an incomplete factual record. Those rulings were all the more appropriate given that the previous administration’s last-minute decision, at times, appeared to apply a clearly erroneous extension of the Indian canon to adjudicatory factfinding and policymaking determinations. The Department’s revised ruling on reconsideration is based on the facts and the law, not an inappropriate application of an ill-supported interpretive rule. Scotts Valley asks this Court to break new ground by extending the Indian canon to agency factfinding and policymaking. Given the canon’s already-precarious position, this Court should decline the invitation and deny Scotts Valley’s motion for preliminary injunction.

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