UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MESCALERO APACHE TRIBE,
PUEBLO OF ISLETA,
PUEBLO OF POJOAQUE, and
PUEBLO OF SANDIA,

Plaintiffs,

v.

KALSHI INC. and KALSHIEX, LLC,

Defendants.

Case No. 2:26-cv-01517-MIS-GJF

BRIEF OF INDIAN GAMING ASSOCIATION, NATIONAL CONGRESS OF AMERICAN INDIANS, UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND, ARIZONA INDIAN GAMING ASSOCIATION, CALIFORNIA NATIONS INDIAN GAMING ASSOCIATION, MINNESOTA INDIAN GAMING ASSOCIATION, WASHINGTON INDIAN GAMING ASSOCIATION, TRIBAL GAMING PROTECTION NETWORK, NATIONAL TRIBAL GAMING COMMISSIONERS & REGULATORS, NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION, AND 26 FEDERALLY RECOGNIZED INDIAN TRIBES AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS' COMBINED MOTION FOR PRELIMINARY INJUNCTION AND RESPONSE TO MOTION TO DISMISS

The Indian Gaming Association ("IGA"), National Congress of American Indians ("NCAI"), United South and Eastern Tribes Sovereignty Protection Fund ("USET SPF"), Arizona Indian Gaming Association ("AIGA"), California Nations Indian Gaming Association ("CNIGA"), Minnesota Indian Gaming Association ("MIGA"), Washington Indian Gaming Association ("WIGA"), Tribal Gaming Protection Network ("TGPN"), National Tribal Gaming Commissioners & Regulators ("NTGCR"), Native American Finance Officers Association

("NAFOA"), and 26 federally recognized Indian tribes ("Amici Tribes")[1] (collectively, "Tribal Amici") respectfully submit this brief in support of Plaintiffs Mescalero Apache Tribe, Pueblo of Isleta, Pueblo of Pojoaque, and Pueblo of Sandia's (collectively, "Tribes") combined motion for preliminary injunction and response to Defendants' motion to dismiss.

INTRODUCTION

The Tribes are asking this Court to recognize, as both Congress and the United States Supreme Court have, their sovereign authority to regulate gaming activity that occurs on their Indian lands. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207–14 (1987); 25 U.S.C. §§ 2701(5), 2702(2). Yet what Defendants Kalshi Inc. and KalshiEX, LLC (collectively, "Kalshi") propose instead is for this Court to override the Indian Gaming Regulatory Act's ("IGRA") tribal-state regulatory structure and turn decades of federal law on its head. Such a radical transformation of gaming regulation, based on nothing but inference, would violate decades of established law and trample the Tribes' sovereignty and their government-to-government agreements.

Congress has unequivocally determined that all forms of class III gaming—including sports betting, 25 C.F.R. § 502.4—occurring on Indian lands are subject to regulation under

[1] The Amici Tribes include: Agua Caliente Band of Cahuilla Indians; Bay Mills Indian Community; Bear River Band of the Rohnerville Rancheria; Elk Valley Rancheria; Hannahville Indian Community; Iowa Tribe of Oklahoma; Jamestown S'Klallam Tribe; Karuk Tribe; Kickapoo Traditional Tribe of Texas; Lytton Rancheria; Mashantucket Pequot Tribal Nation; Mohegan Tribe of Indians of Connecticut; Morongo Band of Mission Indians; Oneida Nation; Pechanga Band of Indians; Pokagon Band of Potawatomi Indians; Pueblo of Acoma; Pueblo of San Felipe; Rincon Band of Luiseño Mission Indians; Santa Ynez Band of Chumash Mission Indians; Seminole Tribe of Florida; Spokane Tribe of the Spokane Reservation; Table Mountain Rancheria; Wilton Rancheria; Yavapai-Apache Nation; and Yuhaaviatam of San Manuel Nation.

IGRA's system of cooperative federalism, in which tribes, states, and the federal government each play a role in the oversight of such gaming. *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022). Critically, under this system, Congress expressly determined that "[c]lass III gaming activities shall be lawful on Indian lands *only if* such activities are[,]" among other things, "authorized by [tribal law and] … conducted in conformance with a Tribal-State compact." 25 U.S.C. § 2710(d)(1) (emphasis added).

When Congress enacted IGRA, it sought to "promot[e] tribal economic development, self-sufficiency, and strong tribal governments[.]" 25 U.S.C. § 2702(1). IGRA has been incredibly successful on that front.[2] And since IGRA's passage in 1988, tribes across the United States have lifted entire generations out of poverty through tribal gaming. Gaming revenue supports thousands of jobs in hundreds of communities, and provides critical funding to tribal, state, and local governments through revenue-sharing agreements, taxes, and economic stimulus.

As noted, IGRA prohibits class III gaming on Indian lands, including sports betting, unless three conditions are met: (1) it is authorized by the tribal government; (2) it is located in a state that permits such gaming; and (3) it is "conducted in conformance with a Tribal-State compact" or procedures prescribed by the Secretary of the Interior. 25 U.S.C. §§ 2710(d)(1), 2710(d)(7)(B)(vii); 25 C.F.R. § 502.4(c). However, despite this, Kalshi uses its online platform to conduct sports betting nationwide—including on the Tribes' respective Indian lands—in blatant violation of IGRA and the Tribes' gaming compacts and ordinances. Notably, Kalshi

[2] *See, e.g.*, Nat'l Indian Gaming Comm'n, FY 2025 Gross Gaming Revenue Report 4 (Jul. 21, 2026) (reporting $46.2 billion in total gross gaming revenue from Tribal gaming), available at https://www.nigc.gov/nigc-announces-46-2-billion-in-fy-2025-gross-gaming-revenues-2/.

does not even bother to argue that its "sports event contracts" are not sports betting within the meaning of IGRA, going so far as to advertise themselves as a "legal sports betting platform."[3] *See* Pls. Compl. at 21 ¶ 82, ECF No. 1. Accordingly, there is no hiding the fact that Kalshi offers sports betting. As the Nevada District Court aptly described, Kalshi's sports-betting contracts "are sports wagers and everyone who sees them knows it." *KalshiEX, LLC v. Hendrick*, No. 2:25-CV-00575-APG-BNW, 2025 WL 3286282, at *8 (D. Nev. Nov. 24, 2025).

Notwithstanding its brazen attempts to avoid federal, tribal, and state restrictions or outright prohibitions on sports betting, Kalshi seeks a get-out-of-jail-free card by arguing that their sports-betting operations do not violate either IGRA, the Tribes' Tribal-State compacts, or the Tribes' respective National Indian Gaming Commission ("NIGC") approved gaming ordinances. Quite literally, Kalshi claims that tribal sovereignty and Congress's "carefully crafted and intricate scheme [under IGRA]" cannot stop its brazenly illegal sports betting activities that occur on the Tribes' Indian lands. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73–74 (1996). This is absurd.[4]

---

[3] *See* Dustin Gouker, *Ten Times Kalshi Said People Could Bet on Things*, Event Horizon (Apr. 3, 2025), https://nexteventhorizon.substack.com/p/ten-times-kalshi-said-people-could.

[4] For years, tribes have been regulating gaming under IGRA, and have worked with various vendors who operate across many jurisdictions in accordance with multiple tribal-state gaming compacts and tribal gaming ordinances. Such vendors have operated in compliance with various rules and regulations, including tribal, state, and international law, which have occasionally even included requiring geofencing. *See, e.g.*, Pls.' Consolidated Mot. for Prelim. Inj. & Resp. to Defs.' Mot. to Dismiss at 32–33, ECF No. 23. Kalshi's claim that upholding the "piecemeal" tribal regulatory frameworks "would be intolerable," *see* Kalshi Defs.' Mot. to Dismiss at 1, ECF No. 21, therefore lacks merit. *See KalshiEX, LLC v. Schuler*, No. 2:25-cv-01165, 2026 WL 657004, at *9 (S.D. Ohio Mar. 9, 2026) ("In Kalshi's view, the CFTC's impartial-access rule is in direct conflict with Ohio's location-based requirements. But Kalshi offers nothing but its own

Congress—through IGRA—codified and expressly recognized tribes' inherent authority to conduct, regulate, and (importantly here) enjoin gaming activity occurring on their Indian lands. Class III gaming—including online sports betting—is permitted on Indian lands only when it is offered pursuant to a tribal-state compact or secretarial procedures and in accordance with any applicable tribal gaming ordinances. Neither the Tribes' gaming compacts nor their gaming ordinances authorize Kalshi's (or anyone else's) sports-betting activity.

Accordingly, this Court should hold that Kalshi's sports-betting activity is unlawful and that the Tribes have the authority to enjoin it.

ARGUMENT

I. Kalshi's Class III Gaming Activity is Prohibited on the Tribes' Indian Lands.

IGRA provides that class III gaming activities—including sports betting—that occur on Indian lands "shall be lawful" only if they are conducted in conformance with a tribal-state compact (or secretarial procedures) and NIGC-approved tribal gaming ordinances. 25 U.S.C. § 2710(d)(1); *see* 25 C.F.R. § 502.4(c). Here, the Tribes are correct that Kalshi's sports-betting contracts are unlawful because they do not comply with either requirement: they are conducted on the Tribes' Indian lands without authorization by either the Tribes' compacts or the Tribes' tribal gaming ordinances. Pursuant to IGRA, the Tribes, therefore, have the right to enjoin Kalshi's activity.

---

ipse dixit that the CFTC would view geographic restrictions predicated on compliance with state law as 'partial.'").

A. Kalshi's Sports-Betting Activities Take Place on Indian Lands.

As an initial matter, operating over the internet does not allow Kalshi to supersede or evade ordinary jurisdictional principles. *See, e.g.*, *Soma Med. Intern. v. Standard Chartered Bank*, 196 F.3d 1292, 1296 (10th Cir. 1999) ("First, personal jurisdiction is established when 'a defendant clearly does business over the Internet,' such as entering into contracts which require the 'knowing and repeated transmission of computer files over the Internet.'" (quoting *Patriot Sys., Inc. v. C-Cubed Corp.*, 21 F. Supp. 2d 1318, 1324 (D. Utah 1998))); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 415 (9th Cir. 1997) (rejecting claim that case should be heard in Arizona because "cyberspace is without borders" and, instead, applying "normal 'minimum contacts' analysis" to determine whether court had personal jurisdiction over the opposing party). Nor does the fact that Kalshi's servers are physically located outside of Indian lands mean that their conduct does not occur on Indian lands. Interjurisdictional gaming using telecommunications has been regulated for over a hundred years and a firm principle has emerged: the gaming occurs at least at the location where the bettor is at the time the bet is placed, unless the relevant laws provide otherwise. *See Ames v. Kirby*, 59 A. 558, 559 (N.J. Sup. Ct. 1904); *State v. Maloney*, 39 So. 539, 545 (La. 1905); *State v. Rose*, 105 P. 82, 85–86 (Mont. 1909).

This principle is also present in federal law, where federal gaming statutes specify that interjurisdictional gaming is only legal where it is legal in both the origin and destination jurisdictions. *See, e.g.*, 18 U.S.C. § 1084(a)–(b); 15 U.S.C. § 3002(3). For example, the Unlawful Internet Gambling Enforcement Act ("UIGEA") clarifies that transactions involving bets that are illegal "in the State or Tribal lands in which the bet or wager is *initiated, received,*

or otherwise made" are prohibited when made via the internet. 31 U.S.C. § 5362(10)(A) (emphasis added).[5]

Further, this principle is expressed in IGRA itself. Where class III gaming is considered to occur depends on "the stuff involved in playing class III games." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 792 (2014). Here, sports betting necessarily involves at least two parties: the bettor and the entity offering the bet or wager. As the bettor's activity is essential to the gaming, at least part of the gaming occurs where the bettor is physically located. *See, e.g.*, *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 967 (9th Cir. 2018) (holding that, where a tribe offers internet gaming allowing bets to be placed from outside of Indian lands, "at least some of the 'gaming activity' … does not occur on Indian lands"); *S. Ute Indian Tribe v. Polis*, No. 1:24-cv-01886, slip op. at 7–8 (D. Colo. Oct. 23, 2025) (same). IGRA's implementing regulations also require the consent of any tribe on whose lands the bettor is located regarding allocations of jurisdiction over internet gaming transactions. *See* 25 C.F.R. § 293.26(c).

Congress therefore crafted IGRA to apply to more than just in-person gaming. Indeed, Congress understood the future of gaming was likely electronic or computerized when it passed IGRA. *See* 25 U.S.C. § 2703(7)(A)(i) (including in the definition of class II gaming all forms of bingo, "whether or not electronic, computer, or other technologic aids are used in connection therewith"). Further, not only did Congress prohibit UIGEA from "altering, limiting, or

[5] UIGEA does provide an exception to its definition of "bet or wager" for transactions occurring on designated contract market ("DCM") exchanges, such as Kalshi. 31 U.S.C. § 5362(1)(E)(ii). However, as explained below, UIGEA does not supersede IGRA as it pertains to Kalshi's sports-betting activity, nor does this same exception apply to sports betting under IGRA. It is therefore inapposite to the determination of *where* a bet or wager occurs for purposes of IGRA.

extending any Federal or State law or Tribal-State compact," it found that internet gaming was primarily funded through personal use of electronic payment system instruments, credit cards, and wire transfers. *See* 31 U.S.C. §§ 5361(a)(1), (a)(4).

Thus, Kalshi's activities occur on Indian lands—regardless of the physical location of their servers—because it offers its sports bets to and engages with bettors physically located on the Tribes' Indian lands.

B. IGRA Codifies Tribes' Inherent Sovereign Authority to Prohibit and Enjoin Kalshi's Sports-betting Activity, Regardless of Its Status as a Non-Tribal Member.

Tribes have the inherent and exclusive sovereign authority to permit, regulate, and prohibit class III gaming occurring on their Indian lands. Contrary to what Kalshi argues, its status as a non-tribal member is immaterial to whether the Tribes can enjoin its illegal sports-betting activity pursuant to their compacts, secretarial procedures, and gaming ordinances. *See, e.g.,* Kalshi Defs.' Mot. to Dismiss at 9–17, 23–24, ECF No. 21. This sovereign authority was expressly recognized by both the Supreme Court and Congress in enacting IGRA. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207–14 (1987). Specifically, Congress recognized that "Indian tribes have *the exclusive right to regulate gaming activity on Indian lands* if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." 25 U.S.C. § 2701(5) (emphasis added). If tribes have "the exclusive right to regulate gaming" on their lands, they necessarily have the power to regulate nonmembers' gaming activities occurring on their lands. *See id*. In other words, the plain language of IGRA does nothing to limit those upon whom tribes may exercise this "exclusive right to regulate gaming,"

so long as it is occurring on their Indian lands. *See id*. Kalshi's meritless *Montana* arguments do not override this.

In fact, Kalshi's reliance on the civil jurisdiction analysis in *Montana v. United States*, 450 U.S. 544 (1981), is wholly inapplicable to this case. The *Montana* analysis is a default framework for courts to use when Congress has not spoken. But, where Congress has authorized or recognized tribal jurisdiction over the activities of non-members (such as within IGRA), the courts must apply those statutes. *See, e.g.*, *Nevada v. Hicks*, 533 U.S. 353, 359 (2001) (explaining that the existence of tribal civil jurisdiction over non-Indians is determined by the *Montana* analysis or an act of Congress); *Spurr v. Pope*, 936 F.3d 478, 485 (6th Cir. 2019) ("Thus, to exercise tribal authority over nonmembers, an Indian tribe must point to one of two sources of power: its inherent sovereign authority or an Act of Congress.").

As California attempted in *Cabazon*, Kalshi attempts to diminish the Tribes' sovereign authority as it relates to gaming activity on their Indian lands. But the Supreme Court recognized that "traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development" are "important federal interests" that are directly advanced by tribal gaming. 480 U.S. at 216–19. Because of these important interests—tribal sovereignty and, more specifically, tribes' sovereign authority to regulate gaming activity occurring on their lands—Congress enacted IGRA to "have extraordinary preemptive power" over the field of gaming regulation on Indian lands. *See Gaming Corp. of Am. v. Dorsey & Whiney*, 88 F.3d 536, 544–45 (8th Cir. 1996).

IGRA's text also confirms that Congress did not intend to preclude tribes from exercising the type of authority the Tribes assert against Kalshi's sports-betting operation here. First, IGRA expressly provides that "a tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands…." 25 U.S.C. § 2710(b)(4)(A). In a later section, IGRA states that "[n]othing in [IGRA] precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with [IGRA] or with any rules or regulations adopted by the [NIGC]." 25 U.S.C. § 2713(d). The NIGC, which is the federal agency charged with regulating Indian gaming activities, has examined IGRA's application to non-Indians engaged in gaming activities on Indian lands, and explained: "IGRA's jurisdiction is not limited to gaming conducted by tribal entities or members. Rather, IGRA's jurisdiction runs with the land and allows gaming, even by non-tribal entities, that is conducted on Indian lands." NIGC, *Tribal jurisdiction over gaming on fee land at White Earth Reservation* (March 14, 2005), available at https://www.nigc.gov/wp-content/uploads/2024/12/56_whiteearthbandofchippewaindns.pdf.[6]

Kalshi is unequivocally offering sports betting—i.e., *gaming*—on its platform, and making it accessible to users on Indian lands without authorization from a tribal gaming

[6] The NIGC has included this memorandum among its "Legal Opinions" on its website. The NIGC's legal opinions are often used to guide its enforcement actions, and Tribes, States, and other parties as to its understanding of IGRA. While such legal opinions do not carry the force of law, they may be used by courts as evidence to understand the meaning of a statute. *Clements v. Serco, Inc.*, 530 F.3d 1224, 1229 (10th Cir. 2008) (stating that agency opinions are entitled to respect under *Skidmore v. Swift & Co.,* 323 U.S. 134 (1944), to the extent that they have the power to persuade).

ordinance, and in violation of a class III gaming compact. As such, the Tribes may assert their regulatory authority over Kalshi's sports-betting operation.

In accordance with this principle and under the terms of IGRA, the Tribes have the right to sue in federal district court to enjoin unlawful class III gaming activity—including Kalshi's sports-betting activity—that occurs on their lands. *See* 25 U.S.C. § 2710(d)(7)(A)(ii) ("The United States district courts shall have jurisdiction over … any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect.").[7]

Thus, IGRA expressly "permits a suit by either the tribe or a state to enjoin illegal class III gaming." *Stockbridge-Munsee Cmty. v. Wisconsin*, 922 F.3d 818, 822 (7th Cir. 2019); *see also* S. Rep. 100-446, 18 (Aug. 3, 1988) (explaining Congress's understanding that IGRA "[g]rants United States district courts jurisdiction over actions by … a tribe or state to enjoin illegal gaming on Indian lands."); *Bay Mills*, 572 U.S. at 787 n.2 ("The general federal-question statute, 28 U.S.C. § 1331, gives a district court subject matter jurisdiction to decide *any claim* alleging a violation of IGRA. Nothing in § 2710(d)(7)(A)(ii) or any other provision of IGRA limits that grant of jurisdiction (although those provisions may indicate that a party has no statutory right of action)." (Emphasis added)); *see also Ho-Chunk Nation v. Kalshi Inc.*, No. 3:25-cv-00698, 2026 WL 1284077, at *5 (W.D. Wis. May 11, 2026) ("To begin, nothing in

[7] If there is any ambiguity as to tribes' authority to enjoin class III gaming conducted on their Indian lands in violation of IGRA (there is not), the well-established Indian Canons of Construction require that this Court interpret any ambiguity to the benefit of the Tribes. *See, e.g.*, *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) ("[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit[.]").

§ 2710(d)(7)(ii), IGRA itself or Congress's findings, purposes, or legislative history in passing IGRA supports an intent to restrict the reach of § 2710(d)(7)(A)(ii) to breach of contract claims between the parties to a gaming compact. Instead, by the terms themselves, 'Tribal-State compacts' are not merely an agreement between two private parties. Rather, they represent agreement as to gambling regulation and enforcement between two governmental bodies—a tribe and a state—under the imprimatur of the federal government."); *cf. Cayuga Nation v. New York State Gaming Comm'n*, 2025 WL 2161290, at *2–8 (N.D.N.Y. Jul. 30, 2025) (finding that court may have equitable jurisdiction to hear tribe's claim that state illegally operated and regulated lottery games on tribal lands in violation of IGRA when tribe did not have a gaming compact).

Additionally, at the same time Congress recognized tribes' power to enjoin illegal class III gaming on their Indian lands, it gave the federal government the exclusive jurisdiction to criminally prosecute such conduct. 18 U.S.C. § 1166(d). Giving the federal government different powers of enforcement than that of tribes is evidence of the cooperative federalism created by Congress in passing IGRA. *See Chicken Ranch*, 42 F.4th at 1032.

Moreover, IGRA's congressional purpose and structure support the Tribes' authority to enjoin illegal third-party gaming operations. IGRA is intended to "promot[e] tribal economic development, self-sufficiency, and strong tribal governments; … to shield [Indian lands gaming] from organized crime … [; and] to ensure that the Indian tribe is the primary beneficiary of the gaming operation …." 25 U.S.C. §§ 2702(1)–(2). These purposes (particularly Congress's intent to ensure that tribes are the primary beneficiaries of gaming on their Indian lands) would be completely undermined if IGRA—despite flatly prohibiting unauthorized class III gaming—

had no mechanism allowing a tribe to prevent illegal, non-tribal class III gaming operations from siphoning revenue or even bringing in organized crime. *Id.* § 2710(d)(1).

Other tribes have also successfully sued to prevent illegal class III gaming on their lands precisely because of the lack of any compact provision allowing such gaming.[8] *See Ho-Chunk Nation*, 2026 WL 1284077, at *1; *Coeur d'Alene Tribe v. Idaho*, 842 F. Supp. 1268, 1282 (D. Idaho 1994) (finding in favor of tribe on claim that Idaho's state lottery operated illegally on tribal lands when not authorized by compact), *aff'd*, 51 F.3d 876 (9th Cir. 1995). Thus, this Court should reject Kalshi's interpretation of IGRA that precludes the Tribes from enjoining its illegal class III gaming. *New York State Dep't of Soc. Svcs. v. Dublino*, 413 U.S. 405, 419–20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

C. Kalshi's Sports-Betting Activity is not Authorized in Accordance with IGRA.

Further, Kalshi's sports-betting activity is not authorized by the Tribes' compacts and expressly violates their gaming ordinances. First, the Tribes' compacts necessarily prohibit Kalshi's sports-betting activity because they authorize *only the Tribes themselves* to conduct

[8] The NIGC has likewise recognized this authority. *See* NIGC Office of General Counsel, Legal Opinion re: Sales of Washington State Lottery tickets & games on Tribal Trust lands at 7 (Oct. 16, 2017), available at https://www.nigc.gov/wp-content/uploads/2025/02/WashStateLottery.pdf ("Indian gaming remains an expression of tribal sovereignty, and Indian tribes may remain the primary regulators of gaming activities on Indian lands. As such, within IGRA's regulatory structure, tribes may license and regulate gaming operations on Indian lands owned by non-tribal entities and individuals."); *see also* NIGC Office of General Counsel, Legal Opinion re: Tribal jurisdiction over gaming on fee land at White Earth Reservation at 7 (Mar. 14, 2005), available at https://www.nigc.gov/wp-content/uploads/2024/12/56_whiteearthbandofchippewaindns.pdf ("Lacking compacts, neither the tribes nor, more to the point, the State could conduct a lottery on the reservations, the court concluded." (citing *Coeur d'Alene*, 842 F. Supp. at 1282)).

class III gaming on their Indian lands, thereby prohibiting all others from doing so. *See* Pls.' Compl. at 10 ¶ 39, ECF No. 1.

Kalshi's argument to the contrary is both wrong and unpersuasive because it fails to apply basic contract interpretation tools, including the general rule that contracts are presumed to be entered with relevant and applicable laws in mind. *See Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 959 (10th Cir. 2021) ("[A] contract incorporates the relevant law in force at the time of its creation." (quoting *Townsend v. State ex rel. State Highway Dep't*, 871 P.2d 958, 960 (N.M. 1994))). Crucially, IGRA provides that class III gaming on Indian lands is illegal unless authorized by compact or secretarial procedures. 25 U.S.C. § 2710(d)(1)(C). Each class III gaming compact must be read with this premise in mind: unless a gaming activity is authorized by a compact, it is not permitted *by that compact*.

Moreover, that Kalshi's conduct is prohibited is only further emphasized by the canon of *expressio unius est exclusio alterius*. *Voter Ref. Found., LLC v. Torrez*, 160 F.4th 1068, 1087–88 (10th Cir. 2025) ("[U]nder *expression unius est exclusion alterius*, '[t]he notion is one of negative implication: the enumeration of certain things in a statute suggests that the legislature had no intent of including things not listed or embraced.'" (quoting *Navajo Nation v. Dalley*, 896 F.3d 1196, 1213 (10th Cir. 2018))). Because the Tribes' compacts authorize only the Tribes to conduct class III gaming, they necessarily prohibit all other entities from doing so. Thus, while Kalshi is not listed by name, the compacts still expressly prohibit its sports-betting operations; there is no need for Kalshi or any other third-party offering illegal gaming to be party to the compact in order for the Tribes to have the right to enjoin their conduct.

The Tribes' compacts do not simply prohibit Kalshi's sports-betting activity—they cannot authorize Kalshi's sports-betting activity at all. The same is true of the Tribes' gaming ordinances. IGRA requires that—with few exceptions inapplicable here—tribes must have the sole proprietary interest in and be the primary beneficiary of all gaming that occurs on their Indian lands. 25 U.S.C. §§ 2710(b)(2)(A)–(B), 2710(d)(2)(A), 2701(2); 25 C.F.R. § 522.7(c). Kalshi is a private, for-profit company that is not affiliated with nor authorized to operate on the Tribes' Indian lands. Its gaming activity on those lands is therefore contrary to a core requirement of IGRA.

Furthermore, the Tribes' tribal gaming ordinances also prohibit Kalshi's gaming activity. *See* Pls.' Compl. at 11–12 ¶¶ 43–47, ECF No. 1. Specifically, the Tribes' tribal gaming ordinances authorize the Tribes *and no one else* to conduct mobile sports betting on their Indian lands. *See id.* at 12 ¶ 45.

Accordingly, because the Tribes' compacts and gaming ordinances do not (and cannot) authorize Kalshi's sports-betting activity on their Indian lands—and even expressly prohibit it—Kalshi's sports-betting activity is unlawful. As such, the Tribes have the authority to enjoin Kalshi's conduct from occurring on their Indian lands.

II. UIGEA Does Not Provide Kalshi's Sports-Betting Operations Safe Harbor from IGRA's Restrictions on Class III Gaming.

In its motion to dismiss, Kalshi argues that IGRA does not apply to its sports-betting activity because UIGEA, a non-substantive payment-processing law, solely governs the online gaming aspect of its sports-betting contracts. Kalshi Defs.' Mot. to Dismiss at 5–6, ECF No. 21. Not so.

Congress narrowly tailored UIGEA to prohibit using certain kinds of financial transactions to fund gaming that is already unlawful. *Iipay Nation*, 898 F.3d at 965 ("In effect, the UIGEA prevents using the internet to circumvent existing state and federal gambling laws, but *it does not create any additional substantive prohibitions*." (emphasis added)). UIGEA's text and structure makes this clear. Congress explicitly directed that UIGEA should not "be construed as altering, limiting, or extending any Federal or … Tribal-State compact prohibiting, permitting, or regulating gambling within the United States." 31 U.S.C. §§ 5362(10)(A), 5367(b); *see also Iipay Nation*, 898 F.3d at 969 n.14. UIGEA is utterly devoid of any language actively authorizing transactions like Kalshi's sports bets. *See* 31 U.S.C. §§ 5361–5367. Rather, "the plain statutory text of the UIGEA[] … prohibits wagers that are illegal in either the jurisdiction where the bet or wager is initiated or where the bet or wager is received." *Iipay Nation*, 898 F.3d at 969 n.12 (emphasis removed) (citing 31 U.S.C. § 5362(10)).

Thus, even under UIGEA, one of IGRA's core principles—that, absent tribal consent, states cannot regulate gaming on Indian lands—continues to "appl[y] in reverse: if a person on tribal lands plays a gambling game with a state-based gambling business, the game must not violate tribal law." 152 Cong. Rec. H8029-30 (daily ed. Sep. 29, 2006) (statement of Rep. Leach).

Kalshi further argues that because its sports bets are "swaps" offered pursuant to the Commodity Exchange Act ("CEA"), its activity is expressly exempt from UIGEA's definition of "bet or wager." Kalshi Defs.' Mot. to Dismiss at 19–20, ECF No. 21. However, as several courts have already established, Kalshi's sports bets are not valid "swaps" subject to the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC")—they are

gaming activity subject to state and tribal gaming laws. *See KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014, 1023 (D. Nev. 2025) ("[E]vent contracts based on the outcome of live events are not 'swaps' within the meaning of the [CEA], and thus do not fall within the CFTC's exclusive jurisdiction."); *Schuler*, 2026 WL 657004, at *6 ("These goals [of the CEA] are better achieved when a 'swap' is understood as a transaction involving financial instruments and measures that traditionally and directly affect commodity prices. Currency exchange rates, the weather, and energy costs all do that; the number of points scored in the Huskies-Bobcats game does not." (emphasis in original)); *QCX LLC v. Nessel*, No. 1:26-cv-00710, 2026 WL 1895958, at *3–6 (W.D. Mich. Jun. 17, 2026) (holding that the context, purpose, and structure of the CEA "suggests Congress had nothing like Plaintiff's products in mind when it defined 'swap.' … Because Congress did not clearly intend that result, the Court must avoid reading the statute as Plaintiff proposes."). And moreover, even if they *were* valid "swaps," which they are not, nothing in the CEA preempts or repeals IGRA or the Tribes' authority thereunder to regulate gaming activity that occurs on their Indian lands. *Ho-Chunk Nation*, 2026 WL 1284077, at *10 ("[E]ven if this court were to agree with the Third Circuit or the CFTC, holding that Kalshi's sports-event contracts are swaps subject to the CFTC's jurisdiction, defendants have not shown that the CFTC would necessarily preempt or repeal IGRA, nor limit plaintiff's tribal authority.").

CONCLUSION

For the foregoing reasons, the Tribal Amici respectfully request that the Court grant the Tribes' motion for preliminary injunction and deny Kalshi's motion to dismiss.

Dated: July 29, 2026

Respectfully submitted,

/s/ Nicole T. Russell
Nicole T. Russell (NM Bar No. 151668)
Joseph H. Webster (*pro hac vice*)
Elizabeth A. Bower (*pro hac vice*)
Jens W. Camp (*pro hac vice*)
Alexandra K. Holden (*pro hac vice*)
Hobbs, Straus, Dean & Walker LLP
1899 L Street NW, Suite 1200
Washington, DC 20036
(202) 822-8282
nrussell@hobbsstraus.com
jwebster@hobbsstraus.com
ebower@hobbsstraus.com
jcamp@hobbsstraus.com
aholden@hobbsstraus.com

Counsel for Tribal Amici

Scott Crowell (*pro hac vice*)
Crowell Law Office
Tribal Advocacy Group PLLC
1487 W State Rte 89A, Suite 8
Sedona, AZ 86336
(425) 802-5369
scottcrowell@clotag.net

Counsel for Rincon Band of Luiseño Indians, Santa Ynez Band of Chumash Mission Indians, and Spokane Tribe of the Spokane Reservation

Michael Hoenig (*pro hac vice*)
Yuhaaviatam of San Manuel Nation
422 1st Street SE
Washington, DC 20003
(909) 936-9684
Michael.Hoenig@sanmanuel-nsn.gov

Counsel for Yuhaaviatam of San Manuel Nation

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I electronically filed the foregoing document with the Clerk for the United States District Court for the District of New Mexico using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Nicole T. Russell
Nicole T. Russell (NM Bar No. 151668)