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

ORAL ARGUMENT REQUESTED

KALSHI'S COMBINED MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION TO DISMISS AND IN OPPOSITION TO THE TRIBES' MOTION FOR PRELIMINARY INJUNCTION

Defendants Kalshi, Inc. and KalshiEX, LLC (together, "Kalshi") respectfully submit this memorandum in response to the Consolidated Motion for Preliminary Injunction and Response to Kalshi's Motion to Dismiss that the Mescalero Apache Tribe, Pueblo of Isleta, Pueblo of Pojoaque, and Pueblo of Sandia (together, the "Tribes") filed on July 22, 2026, Dkt. No. 23 ("Consolidated Brief" or "Br."). The Court should grant Kalshi's Motion to Dismiss, Dkt. No. 21 ("MTD") and deny the Tribes' Motion for Preliminary Injunction.

PRELIMINARY STATEMENT

Decades ago, Congress placed trading of derivatives on designated contract markets under the exclusive jurisdiction of the CFTC.[1] It has confirmed the agency's sole authority over those markets on multiple occasions since. Kalshi operates one such exchange.

In this suit, the Tribes contend that they too have the sovereign power to regulate Kalshi's exchange. They originally alleged that they have inherent sovereign authority over Kalshi. *See, e.g.*, Compl. ¶¶ 13, 107, 112, 115, 120, 123, 128, 131, 136. But under *Montana v. United States,* 450 U.S. 544 (1981), the Tribes lack authority over nonmembers like Kalshi. And *Montana*—as Kalshi explained in its Motion to Dismiss—is subject only to two narrow exceptions, neither of which is present here.

In response, the Tribes ask the Court to ignore Montana, claiming it is "moot." Br. at 15. They turn to IGRA instead, arguing that it gives them authority to "enforce[ ]" their tribal gaming laws against Kalshi. *Id.* at 10. But IGRA does no such thing. The statute provides tribes with only two limited causes of action, neither of which the Tribes invoke and neither of which authorizes suit for violation of tribal ordinances or regulations. 25 U.S.C. § 2710(d)(7)(A)(i), (ii). Recognizing that they have no cognizable claim under Section 2710(d)(7), the Tribes instead turn

[1] Capitalized terms not otherwise defined have the meanings ascribed to them in Kalshi's Motion to Dismiss.

to a separate provision of IGRA, 25 U.S.C. § 2710(d)(1), asking the Court to find that it renders their tribal gaming laws "enforceable" in federal court. But that provision offers no help either—it simply sets the conditions for lawful class III gaming on Indian lands. It does not authorize tribes to sue for violations of tribal gaming laws, convert a tribal ordinance into federal law, or delegate to tribes the authority to regulate nonmembers. The Tribes lack inherent sovereign or statutory authority to enforce tribal gaming laws against Kalshi, and their claims therefore fail at the threshold.

Even if the Tribes could clear that problem, their Complaint still fails to state a claim. The CEA assigns the CFTC exclusive jurisdiction over DCMs and preempts laws—including the Tribes' Ordinances and Regulations—that purport to regulate derivatives trading as gaming. And in UIGEA, Congress made clear that transactions on such an exchange are not bets or wagers subject to state or tribal gaming prohibitions. The Tribes cannot state a claim against Kalshi for violating their tribal laws because those laws are preempted by the CEA.

For the same reasons, the Tribes' request for a preliminary injunction—which they waited well over a year to seek—is doomed. A preliminary injunction is an extraordinary remedy available only on a clear showing as to each required element, and courts apply even more exacting review where, as here, the requested injunction would alter the status quo and give the movant substantially all the relief it could obtain after trial. Under this standard, the Court should decline to impose an injunction that would cause significant commercial and operational harm to Kalshi, impose costs that would be unrecoverable even if Kalshi ultimately prevailed, and put Kalshi at odds with the requirement of federal law that DCMs provide impartial access—a concern the CFTC itself has raised. Nor have the Tribes established any irreparable—let alone imminent—harm they would suffer in the absence of an injunction. The public interest lies not in requiring Kalshi to engage in costly measures that would be highly disruptive to third parties transacting on its exchange, but in adhering to the uniform regulatory scheme Congress built to govern the nation's derivatives markets. Tellingly, both courts to have considered tribal requests for a preliminary injunction against Kalshi have denied them.

The Complaint should be dismissed and the Tribes' request for a preliminary injunction denied.[2]

ARGUMENT

I. THE TRIBES' COMPLAINT SHOULD BE DISMISSED.

A. The Tribes Lack Authority to Sue Kalshi for Violation of the Ordinances and Regulations.

Under *Montana v. United States,* 450 U.S. 544, 565 (1981), the Tribes lack authority to enforce their laws against Kalshi, a nonmember. And as Kalshi has explained, they do not fall within either of *Montana*'s narrow exceptions. For that reason, the Tribes pretend that "*Montana* [is] moot" (Br. at 15) and attempt to recast their claims against Kalshi as arising under IGRA. But the Complaint does not assert a cause of action under IGRA. And even if it did, neither the statute itself nor the canons of statutory interpretation the Tribes cite permit them to sue Kalshi for violating tribal laws.

1. IGRA Does Not Give the Tribes Authority to Sue Kalshi for Violating Their Tribal Laws.

The Tribes lack sovereign authority over nonmembers like Kalshi. MTD at 9-17; *see infra* § I.A.2. They have no real response to the limits imposed by *Montana* and its progeny, instead asserting in conclusory fashion that they "indisputably have authority to sue Kalshi for violating the Tribal Gaming Laws and the Compact under IGRA." Br. at 8. The Tribes should not be

[2] Three tribes that have themselves unsuccessfully sought preliminary injunctions against Kalshi in other courts have filed a motion for leave to file an amicus brief, making multiple arguments Plaintiffs have not advanced and that therefore can neither rescue their Complaint nor support the imposition of a preliminary injunction. *See* Dkt. No. 48.

permitted to recast their Complaint as asserting "claims for violation of [IGRA]" when it does not. *Id.* at 1; *cf.* Compl. § VIII. And in any event, they are wrong for three reasons.

First, IGRA empowers tribes to sue only in two limited circumstances: (i) where a state fails to enter negotiations with a tribe "for the purpose of entering into a Tribal-State compact" or refuses to "conduct such negotiations in good faith," and (ii) to "enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact." 25 U.S.C. § 2710(d)(7)(A). These causes of action are "limited." *Wisconsin v. Ho-Chunk Nation*, 512 F.3d 921, 933-34 (7th Cir. 2008). And the statute ***nowhere*** authorizes tribes to bring suit in federal court for violations of "Tribal Gaming Laws." *Hartman v. Kickapoo Tribe Gaming Comm'n*, 319 F.3d 1230, 1232-33 (10th Cir. 2003) ("Congress expressly provided various causes of action in favor of tribes . . . for certain violations of IGRA . . . . [W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies." (internal citation omitted)); *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000) ("where IGRA creates a private cause of action, it does so explicitly"); *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1249 (11th Cir. 1999) ("an implied right of action would wreak havoc upon the existing remedial scheme of IGRA").

Indeed, it is presumably for this very reason that the Complaint ***does not*** assert a cause of action under 25 U.S.C. § 2710(d)(7).[3] Instead, the Complaint vaguely asserts that the Tribes' Ordinances and Regulations are "made enforceable" under a separate provision of IGRA—25 U.S.C. § 2710(d)(1). Compl. ¶¶ 112, 120, 128, 136; *see also* Br. at 10 (arguing IGRA "makes [tribal gaming laws] enforceable"). That provision does not authorize suit by a tribe. The Tribes do not and cannot point to anything in IGRA, or any binding case law construing IGRA, that gives

[3] Proposed amici's discussion of 25 U.S.C. § 2710(d)(7)(A)(ii) is thus unavailing. *See* Dkt. No. 48-1, at 4. The Tribes have not brought suit under that provision.

them federal statutory authority to sue Kalshi for alleged violation of their Ordinances and Regulations.[4] *See Hartman*, 319 F.3d at 1232-33.

Second, IGRA does not "expressly incorporate[ ]" the Tribes' Ordinances and Regulations. The Tribes rely upon 25 U.S.C. § 2710(d)(1)(A), which states that class III gaming activities are lawful only if "authorized by an ordinance or resolution." Br. at 10. But requiring that class III gaming be authorized by a tribal ordinance does not turn that ordinance into federal law. *See Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 704 (2022) (statute stating its provisions were "enacted in accordance with" tribal resolution did not "incorporate that resolution into federal law"); *Stewart v. Keyes*, 295 U.S. 403, 415 (1935) (statute subjecting certain Indians "to the laws of the state" did not "thereby incorporate those laws into the federal restrictions," "[t]he laws remained state laws"); *Struss v. United States Dep't of Agric.*, 2019 WL 2490721, at *4 (D. Kan. June 14, 2019) (federal regulation that "recognize[s] and appl[ies]" certain external procedures "does not purport to incorporate all such procedures by reference" (citation omitted)). While Congress need not use "magic . . . words" to incorporate external laws (Br. at 13), it does need to command such incorporation clearly. *See* MTD at 14. Section 2710(d)(1) contains no such command.

In defense of their incorporation theory, the Tribes rely not on any clear language in the statute, but rather on "the reference canon of statutory interpretation." Br. at 10. That puts the cart before the horse. The reference canon comes into play only where it is clear that a statute incorporates an external law. It aids the court in determining whether the statute incorporates that

[4] To the extent that the Tribes claim violations of their Compacts, they have not asserted a cause of action under the single provision of IGRA that gives tribes the authority to do so, 25 U.S.C. § 2710(d)(7)(A)(ii), relying instead on § 2710(d)(1). *See* Compl. § VIII. That provision does not authorize suit for compact violations; Congress gave tribes that authority only in § 2710(d)(7)(A)(ii). And in any event, the Tribes fail to state a claim for violation of their compacts. *See* MTD at 23-25; *see infra* § I.C.

external law as it stood at the time the statute was enacted or whether, instead, it incorporates the law as it has evolved over time. *See Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 209-10 (2019) (reference canon solves question of whether a referring statute incorporates external law "as it exists whenever a question under the statute arises" or "as it existed when the referring statute was enacted"); *Brown v. United States*, 602 U.S. 101, 116 (2024). The reference canon does not apply where, as here, there is no clear evidence of incorporation, and it does not aid the Court in determining whether incorporation occurred in the first place.

That is why—in each of the cases the Tribes cite (Br. at 11-12)—the court ***first*** found that the referring statute actually incorporated an external law, and ***only then*** proceeded to use the reference canon to determine ***which*** version of the incorporated law governed. *See El Encanto, Inc. v. Hatch Chile Co.*, 825 F.3d 1161, 1163-64 (10th Cir. 2016) (first concluding that referring statute incorporated a federal rule because it explicitly said the rule "shall apply" to certain categories of cases, and then invoking the reference canon to address "which version of [the rule] the statute's language means to reference"); *United States v. Dire*, 680 F.3d 446, 451, 467, 469 (4th Cir. 2012) (first concluding that statute explicitly incorporated terminology "as defined by" an external body of law, and then inquiring whether the definition is "fixed in the early Nineteenth Century" or "changes with advancements in the law"); *United States v. Fulcar*, 181 F.4th 63, 77 (1st Cir. 2026) (applying canon to determine "temporal reference point" of an incorporated law).

Third, IGRA does not delegate to the Tribes the authority to enforce their tribal laws against Kalshi. In a last-ditch effort to claim authority under the statute, the Tribes argue that "even if" Section 2710(d)(1)(A) does not confer authority through incorporation, it does so through delegation, contending there is no real difference between the two. *See* Br. at 14-15. But delegation—which the Tribes did not plead in their Complaint—cannot save their claims either. *See Wroten v. Walmart*, 2020 WL 2364570, at *2 (D.N.M. Apr. 20, 2020).

To be sure, Congress "can delegate to tribes its own power to regulate." Br. at 14. But "after *Montana*, tribal sovereignty over nonmembers cannot survive without ***express*** congressional delegation." *South Dakota v. Bourland*, 508 U.S. 679, 695 n.15 (1993) (emphasis added) (internal citation omitted). Section 2710(d)(1) contains no such express delegation, and the cases the Tribes cite (Br. at 14-15) do not construe IGRA and are distinguishable.[5] "Had Congress intended to" delegate its authority, "it would have done so in a clear manner; instead, it undertook to balance those interests itself in IGRA." *New Mexico v. Dep't of Interior*, 854 F.3d 1207, 1226 (10th Cir. 2017). In doing so, Congress was guided by "the 'significant governmental interests' of competing sovereigns—including the powerful economic interests involved in the regulation of Class III gaming." *Id.*[6]

The Tribes point to the role of the NIGC in approving tribal laws as evidence of delegation. Br. at 14-15; *see also* Dkt. No. 48-1, at 8. But the NIGC is a ***federal*** agency, and approval of tribal laws by the NIGC is a federal oversight mechanism, part of the balancing of various governmental interests set forth in the "statutory scheme established by Congress in IGRA" for regulation of Indian gaming—not a delegation of congressional plenary power to the Tribes themselves. *New Mexico*, 854 F.3d at 1225-26; *see also Seneca-Cayuga Tribe of Okla. v. Nat'l Indian Gaming Comm'n*, 327 F.3d 1019, 1024 (10th Cir. 2003) ("regulation of Class III gaming is shared by the

[5] *See United States v. Mazurie*, 419 U.S. 544, 547 n.4, 548 (1975) (ordinarily applicable federal liquor laws "shall not apply" where tribe "duly adopted" an ordinance that could serve as a substitute for "area[s] within Indian country"); *Rice v. Rehner*, 463 U.S. 713 (1983) (similar); *Ariz. Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1288 (D.C. Cir. 2000) (statute that "authorizes EPA to treat otherwise eligible tribes as states" delegated authority to tribes over "nonmember owned fee land within a reservation"); *see also* MTD at 16-17 (examples of express congressional delegation of regulatory authority to tribes limited to authority over nonmembers with territorial connections to Indian lands).

[6] *Nebraska v. Parker*, 577 U.S. 481 (2016), does not move the needle. There, the issue was where the physical boundary of a reservation should be drawn and whether the ***state's*** jurisdiction over the land was exclusive or shared with tribal authorities.

tribes, the states, the NIGC, and the Department of Justice" (emphasis omitted)); 25 U.S.C. § 2710(d)(5) (discussing the limit of the tribes' "concurrent authority" with the State over class III gaming); *id.* § 2710(d)(1)(A)(iii), (d)(2) (discussing the authority of the Chairman of NIGC with respect to approval of compacts and ordinances relating to class III gaming); 18 U.S.C. § 1166(a), (c)(1) (establishing federal laws regarding licensing, regulation, or prohibition of gambling in Indian country).[7] IGRA's stated purpose, after all, was to establish "independent ***Federal regulatory authority*** for gaming on Indian lands, and the establishment of ***Federal standards*** for gaming on Indian lands," 25 U.S.C. § 2702(3) (emphases added), to address the "outcries" over the "vacuum in legal authority at either the state or federal level" created by "the expansion of gaming in Indian country free of state regulatory control." *Pueblo of Pojoaque v. Biedscheid*, 689 F. Supp. 3d 1033, 1086 (D.N.M. 2023) (discussing early drafts of IGRA).

2. The Tribes Lack Inherent Sovereign Authority Over Kalshi.

Nor do the Tribes have inherent sovereign authority over Kalshi, a nonmember. Indeed, although they leaned heavily on inherent sovereign authority in their Complaint, *see* Compl. ¶¶ 108, 112, 116, 124, 132, the Tribes offer no serious argument that either of *Montana*'s two narrow exceptions should apply, instead side-stepping *Montana* by declaring it "moot." Br. at 15. They appear to have abandoned any argument that their right to physically exclude nonmembers from Indian lands is a basis for regulating an online derivatives exchange. *See* MTD at 11-13. Nor do they pretend to fall within *Montana*'s second exception, which applies only where nonmember conduct is "'catastrophic' for tribal self-government." *Ute Indian Tribe of Uintah &*

[7] Proposed amici repeatedly cite 18 U.S.C. § 1166 in support of their argument that IGRA gives tribes "broad" power to enforce "federalized" tribal laws. *E.g.*, Dkt. No. 48-1 at 9. But that provision confers "exclusive jurisdiction" on the federal government—not tribes—to prosecute violations of state gambling laws occurring on Indian lands, unless that authority has been conferred through a tribal-state compact on the relevant state. 18 U.S.C. § 1166(d).

Ouray Reservation v. McKee, 32 F.4th 1003, 1010 (10th Cir. 2022) (quoting *Plains Com. Bank v. Long Fam. Land & Cattle Co.*, 554 U.S. 316, 341 (2008)); *see also* MTD at 11-13.

The Tribes quibble with Kalshi's arguments concerning *Montana*'s first exception. *See* Br. at 15-18. That exception applies only where a tribe seeks to regulate "the activities of nonmembers who enter consensual relationships with the tribe or its members" with conduct physically tied to tribal land. *Nevada v. Hicks*, 533 U.S. 353, 359 n.3 (2001). It does not permit the Tribes to exert regulatory authority over Kalshi's offering of sports event contracts on its federally regulated exchange, which does not occur "***inside*** the reservation," but rather online. *Plains Com. Bank*, 554 U.S. at 332 (emphasis added); *see also Lexington Ins. Co. v. Smith*, 117 F.4th 1106, 1110 (9th Cir. 2024) (conduct did not occur "inside the reservation" for purposes of *Montana* where, as here, it was "entirely conducted over the Internet").[8]

The Tribes conflate cases addressing whether an activity occurs "on Indian land" for purposes of IGRA with *Montana*'s "inside the reservation" inquiry. Br. at 15-18.[9] None of those cases addresses *Montana*'s core concern, which is whether the exercise of tribal jurisdiction over a nonmember is consonant with "the sovereignty of the tribe ***over its land***." *Jackson v. PayDay Fin., LLC*, 764 F.3d 765, 782 (7th Cir. 2014) (emphasis added). That is why courts require that the conduct at issue bear "some ***direct connection to*** tribal lands" that implicates a tribe's

[8] The Tribes incorrectly state that *Lexington* was decided by the Ninth Circuit en banc. Br. at 16. That decision was issued upon the Ninth Circuit's denial of rehearing en banc.

[9] Citing *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014), *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018), *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960 (9th Cir. 2018), *Crosby Lodge, Inc. v. Nat'l Indian Gaming Comm'n*, 2011 WL 13262030 (D. Nev. Aug. 16, 2011), and *S. Ute Indian Tribe v. Polis*, 810 F. Supp. 3d 1203 (D. Colo. 2025). Equally inapposite are Plaintiffs' citations to *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), and *Quik Payday, Inc. v. Stork*, 549 F.3d 1302 (10th Cir. 2008). Br. at 16-17. *Zippo* involved the constitutional reach of states' long-arm statutes in non-tribal actions, and *Quik Payday* involved a challenge to a state law under the dormant Commerce Clause.

sovereignty "over [its] ***territory***" before they will conclude that *Montana*'s first exception applies. *Lexington*, 117 F.4th at 1110, 1112 (*Montana*'s first exception permitted exercise of tribal authority over a nonmember insurance company that offered coverage for tribal property located on tribal land, as distinguished from nonmember activities "conducted over the internet," which do "***not*** implicate the sovereignty of the tribe over its land") (emphasis added) (citations omitted); *see also MacArthur v. San Juan Cnty.*, 497 F.3d 1057, 1071 (10th Cir. 2007) ("Supreme Court precedent clearly limits the regulatory authority of tribes . . . to the reservation's borders."); *Jackson*, 764 F.3d at 782 (tribes lacked jurisdiction over plaintiffs who "did not enter the reservation" notwithstanding that they conducted business with tribal members located on tribal land); MTD at 10-13 (collecting cases). Nor is this case like *DISH Network Serv. L.L.C. v. Laducer*, 725 F.3d 877, 885 (8th Cir. 2013), where the court found that *Montana*'s first exception applied because a nonmember had contracted to provide a tribal member a service that would physically occur on Indian land. *Id.*; *see also Otoe-Missouria Tribe of Indians v. N.Y. State Dep't of Fin. Servs.*, 769 F.3d 105, 115 (2d Cir. 2014) (suggesting online-only transactions do not occur on-reservation); *Colorado v. W. Sky Fin., LLC*, 845 F. Supp. 2d 1178, 1181-82 (D. Colo. 2011) (similar).

B. The Tribes Fail to State a Claim for Violation of the Ordinances and Regulations.

The Tribes charge Kalshi with conducting class III gaming, but in the CEA and UIGEA, Congress determined that event contracts traded on a DCM like Kalshi are swaps, and ***not*** betting or wagering. The CEA grants the CFTC exclusive jurisdiction over swaps, preempting any tribal laws purporting to regulate them. For that reason, too, the Tribes' claims fail.

1. The CEA Grants the CFTC Exclusive Jurisdiction Over Trading on DCMs and Preempts the Application of the Tribes' Ordinances and Regulations to Kalshi.

The CEA gives the CFTC "exclusive jurisdiction" over trading on DCMs. 7 U.S.C. § 2(a)(1)(A); *see also KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 226 (3d Cir. 2026) ("Kalshi's sports-related event contracts are swaps traded on a CFTC-licensed DCM, so the CFTC has exclusive jurisdiction."); MTD at 17-19. The Tribes do not dispute that. Instead, they characterize Section 2(a)(1)(A) as a "historic" provision that merely allocated authority between the CFTC and the Securities and Exchange Commission ("SEC"). Br. at 18; *see also* Dkt. No. 48-1, at 11. According to the Tribes, when Congress later enacted IGRA, it "preempted the field of Indian lands gaming regulation." *Id.* And—their theory goes—Dodd-Frank, which "says nothing about Indian tribes or Indian lands gaming," *id.* at 19, did nothing to change IGRA's preemptive effect with respect to regulation of gaming on Indian lands. This revisionist history ignores plain statutory text, the legislative record, and common sense, and the Court should decline to adopt it.

Section 2(a)(1)(A) does not merely achieve a "historical" division of regulatory jurisdiction between the CFTC and SEC. It was enacted as part of the 1974 amendments to the CEA, which were intended to "preempt the field insofar as futures regulation is concerned," H.R. Rep. No. 93-1383, at 35 (1974) (Conf. Rep.), and to bring "all futures trading under federal regulation," *Commodity Futures Trading Commission Act: Hearings Before the S. Comm. on Agric. & Forestry on S. 2485, S. 2578, S. 2837, and H.R. 13113*, 93d Cong., 2d Sess. 848 (1974). The Tribes themselves cite precedent confirming exactly this. Br. at 18 (citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 388 (1982)) (exclusive jurisdiction provision was intended to "consolidate federal regulation of commodity futures trading in the Commission").[10]

Further, the fact that in IGRA Congress intended to occupy the field with respect to regulation of gaming on Indian lands in no way suggests that IGRA somehow changed or diminished the CFTC's exclusive jurisdiction over "futures regulation," established by Congress over a decade earlier. Those two regulatory spheres are distinct. As the Supreme Court has recognized, IGRA is concerned with gaming on Indian lands and "nowhere else." *Bay Mills*, 572 U.S. at 795. But with respect to transactions occurring on DCMs, it has nothing to say. That is hardly surprising. By the time IGRA was enacted in 1988, Congress had already placed derivatives exchanges under the sole regulatory oversight of the CFTC, and the phenomenon of internet gambling had yet to emerge. When Congress turned its attention to internet gambling through the enactment of UIGEA in 2006, it expressly carved out transactions on DCMs from the reach of the statute, confirming Congress's treatment of gambling and derivatives trading as separate activities, no matter what superficial similarity they may have. And, in passing Dodd-Frank in 2010, Congress reaffirmed its commitment to exclusive regulation of the nation's derivatives markets by

[10] *Curran* also addressed § 2(a)(1)(A)—the "savings clause"—which notes that "[n]othing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State." Contrary to proposed amici's contention, *see* Dkt. No. 48-1, at 15, the Court held that the savings clause was intended to confirm that "the private cause of action ***under the CEA*** that was previously available to investors survived the 1974 amendments." *Curran*, 456 U.S. at 388 (emphasis added). *Curran* did not hold, as the Tribes incorrectly suggest, that the CFTC's exclusive regulation is only vis-à-vis the SEC. *See also* S. Rep. No. 93-1131, at 31 (1974) (making clear that state-law savings clause in § 2(a)(1)(A) applied "except as hereinabove provided"—*i.e.*, in the grant of exclusive jurisdiction to the CFTC, ensuring that "the Commission's jurisdiction, where applicable supersedes State as well as Federal agencies"); H.R. Rep. No. 93-1383, at 35 (striking provision that would have preserved "any State law applicable" to derivatives transactions).

the CFTC, including with respect to event contracts that might "involve . . . gaming" (in the words of the Special Rule). 7 U.S.C. § 7a-2(c)(5)(C)(i); *see also* MTD at 6-7.[11]

The Tribes protest that Dodd-Frank "says nothing" about gaming, except in the Special Rule and the "irrelevant preemption of state 'bucket shop' laws." Br. at 19. But the Special Rule is a significant exception: it expressly leaves to the CFTC's discretion the determination of whether certain event contracts, including those involving "gaming," are contrary to the public interest and it confirms the CFTC's plenary regulatory oversight of such instruments.[12]

Unable to overcome the plain text of the CEA and UIGEA, the Tribes resort to conjecture. They contend, for example, that by excluding DCM transactions from the definition of "bet or wager," UIGEA somehow means "that the CEA and Dodd-Frank expressly prohibit gambling on DCMs." Br. at 25. The Tribes cannot seriously expect the Court to read UIGEA, which excludes DCM transactions from prohibitions on certain "bets or wagers," to mean that those same transactions are nevertheless prohibited under a different statute. The Tribes also note that the CFTC had not yet approved sports event contracts for trading on DCMs at the time UIGEA was enacted, suggesting that the statutory carve-out could not have been meant to encompass such instruments. *Id.* But UIGEA's text is unambiguous and not so limited: Transactions on DCMs—no matter their subject matter or characterization—are not "bets or wagers" and thus are exempt

[11] Proposed amici misleadingly cite *FERC v. Barclays Bank PLC*, 105 F. Supp. 3d 1121 (E.D. Cal. 2015), for the proposition that the "CFTC does not possess exclusive jurisdiction over swaps." Dkt. No. 48-1, at 14. In fact, in that case the court noted that ***before*** the passage of Dodd-Frank, during the 2006 to 2008 period, most over-the-counter swaps were not regulated by the CFTC. That changed when, "in 2010," over a decade before Kalshi began offering swaps, "the Dodd–Frank Act added swaps to the exclusive jurisdiction provision in section 2(a)(1)." *Id.* at 1143.

[12] Kalshi agrees that Section 16(e)(2) is irrelevant to the matters at hand. That provision, which was enacted in 1992 and subsequently amended in 2000, addresses transactions that occur off-DCM—that is, so-called "over-the-counter" derivative transactions. The CEA's preemptive effect with respect to on-DCM transactions such as Kalshi's event contracts is found in Section 2(a)(1)(A).

from state or tribal regulation as such.

The Tribes set up a strawman, arguing that, to prevail, Kalshi must take the position that Dodd-Frank impliedly repealed IGRA with respect to "online sports betting on Indian lands," and then arguing that Kalshi's position would be wrong. *Id.* at 20. But Kalshi has never argued that Dodd-Frank repealed IGRA and does not take that position here. That is because IGRA simply ***does not address*** the kind of internet-based transactions that the Tribes challenge in this suit. *See Iipay Nation*, 898 F.3d at 968 ("IGRA is silent" with respect to "financial transactions associated with gaming on Indian lands facilitated by the internet"). Instead, UIGEA addresses such transactions and confirms the CFTC's exclusive jurisdiction over trading on DCMs. *See* 31 U.S.C. § 5362(1)(E)(ii); *Blue Lake Rancheria v. Kalshi Inc.*, 2025 WL 3141202, at *6 (N.D. Cal. Nov. 10, 2025) (UIGEA carve-out "contemplates [ ] delineation" between IGRA and the CEA); *see also* MTD at 6, 19-20. As the Tribes themselves put it, the two statutes' "respective subject matters are quite distinct." Br. at 21. On that, the Tribes and Kalshi agree: "there is no direct conflict between IGRA and UIGEA." *Id.* at 26 (quoting *Iipay Nation*, 898 F.3d at 968). IGRA governs class III gaming on Indian lands, while UIGEA confirms that trading of event contracts on DCMs is governed by the CEA.[13]

The Tribes also argue that giving effect to the CEA's grant of exclusive jurisdiction to the CFTC would "divest[ ]" them of their "retained sovereign authority," Br. at 19-20, and such "divestiture" is "disfavored" and requires a "clear and unambiguous" expression of congressional

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[13] The CFTC reaffirmed this delineation in its recent Notice of Proposed Rulemaking ("NPRM"). MTD at 7. The Tribes suggest that Kalshi seeks to rely on the NPRM as a shield from liability. Br. at 28-29. It does not. But the NPRM is an additional indication of Congress's view of the relationship between the CEA and IGRA. *Cf. Merriman v. Kansas City S. R.R. Co.*, 2025 WL 3188734, at *3 (E.D. Okla. Nov. 14, 2025) ("courts may still use agency decisions as interpretive aids") (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 371 (2024)); *see also Lopez v. Garland*, 116 F.4th 1032, 1036 (9th Cir. 2024) (even after *Loper Bright*, courts "may look to agency interpretations for guidance").

intent, *id.* at 11 (quoting *NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1194 (10th Cir. 2002)). But the doctrine disfavoring "divestiture" is only relevant if there is something to "divest": Only the "***retained*** sovereign authority of Indian tribes is subject to divestiture by Congress." *San Juan*, 276 F.3d at 1194 (emphasis added). The Tribes do not retain sovereign authority over nonmembers like Kalshi. *Montana*, 450 U.S. at 565; *see supra* § I.A.2.

2. Counts II and IV Fail Because the Tribes' Ordinances and Regulations Rely on Preempted State Law.

Counts II and IV must be dismissed for the additional reason that two of the Tribes' Ordinances and Regulations permit gaming only to the extent permitted (if at all) by New Mexico law. *See* Isleta Ordinance § 1(B) (2024); Sandia Ordinance §§ 1(B), (F) (1995); Isleta Regulations § 9(HH) (2024); Ex. C § 3.3(a). Those tribal laws thus rise and fall with New Mexico law, which is preempted by the CEA with respect to Kalshi's conduct. MTD at 21-23.

The Tribes argue that the "Tribal Gaming Laws do not take their force from state laws." Br. at 27. That is beside the point. "[T]he fact that the Tribes agreed to use state law as their own does not establish that the Tribes therefore derived their authority to act from state law. The Tribes merely exercised their sovereignty in deciding what law would govern their actions." *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1306 (10th Cir. 2001). Sandia and Isleta decided they would apply New Mexico's gaming laws as their own. And those laws are preempted as applied to trading on Kalshi's DCM.

With respect to the preemption of New Mexico law, the Tribes urge this Court to apply the "materially" different standard set forth in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). *See* Br. at 26. *Bracker* is inapplicable. It concerned the "boundaries between ***state*** regulatory authority and tribal self-government" and "whether the exercise of ***state*** authority" over Indian tribes "has been pre-empted by operation of federal law." *Bracker*, 448 U.S. at 141, 143 (emphases added). The question here is not whether New Mexico can exercise regulatory authority over the Tribes. The question is whether the CEA preempts the New Mexico laws upon which the Tribes' laws depend. It does. *See Flaherty*, 172 F.4th at 229 ("[T]he Act preempts state law purporting to regulate futures trading"); *KalshiEX v. Johnson*, 2026 WL 1223373 (D. Ariz. May 5, 2026); *KalshiEX LLC v. Orgel*, 2026 WL 474869 (M.D. Tenn. Feb. 19, 2026); *United States v. Minnesota*, -- F. Supp. 3d --, 2026 WL 2150211 (D. Minn. July 27, 2026); Compl., *United States v. New Mexico*, No. 26-cv-1912 (D.N.M. June 12, 2026), Dkt. No. 1. Nor are the Tribes correct in claiming that Kalshi's preemption argument misconstrues the "target" at which their laws aim. Br. at 27. The Tribes seek to apply their Ordinances and Regulations to the trading of event contracts on Kalshi's DCM. Compl. ¶ 1. As the Third Circuit has explained, the proper "scope of field preemption [i]s [therefore] the regulation of trading on a DCM." *Flaherty*, 172 F.4th at 229.

And aside from preemption, Counts II and IV must still be dismissed because New Mexico itself excludes from the definition of gambling "bona fide business transactions" such as commodities contracts and those permitted by law; it also expressly permits transactions within the exclusive jurisdiction of the CFTC and occurring on DCMs. MTD at 22-23.

C. <u>The Tribes Fail to State a Claim for Violation of the Compact.</u>

The Tribes also purport to sue Kalshi for violating their Compact. But they do not assert that claim under the provision of IGRA that actually creates a cause of action for tribes to sue for breach of a Tribal-State compact. 25 U.S.C. § 2710(d)(7)(A)(ii). And they have no generalized authority to assert a Compact violation claim against Kalshi. *See supra* § I.A.2.

The claim fails for another, equally fundamental reason: It makes no sense. Kalshi is not a party to the Tribes' compact with the State of New Mexico and therefore cannot violate it. The compact at issue is what IGRA refers to as a "Tribal-State compact"—a contract "entered into by the Indian tribe and the State." 25 U.S.C. § 2710(d)(1)(C). The Compact itself makes this clear from the outset: "the ***State and the Tribe*** agree as follows." Compact, Introduction (emphasis added) [14]; *see also id.* §§ 7(A)(1), 13(B), 14 (framing the Compact's breach, notice, and integration provisions in terms of the two parties to it). Indeed, the Tribes agree that a compact is an "agreement as to gambling regulation and enforcement ***between two governmental bodies—a tribe and a state***." Br. at 27 (emphasis added) (quoting *Ho-Chunk Nation v. Kalshi Inc.*, 2026 WL 1284077, at *5 (W.D. Wis. May 11, 2026)).[15]

As such, the Compact does not bind nonparty Kalshi. MTD at 23-24 (collecting cases). And the Tribes never explain how it could. They argue that the Compact is "not [a] garden-variety contract," that it is "a creature of IGRA and replete with references to IGRA," and that it "subjects all class III gaming on the Tribes' Indian lands to the Tribal Gaming Laws." Br. at 27-28. But they cite no statutory text or other authority making it enforceable against nonparties.[16]

Even assuming the Compact applied to Kalshi, the Tribes have not alleged that Kalshi is in violation of it. They assert that Kalshi "does not contend that its online sports betting is conducted in conformity with the Compact." *Id.* at 28. But Kalshi does not offer "online sports

[14] Like Plaintiffs, Kalshi refers to a singular "Compact" throughout this brief because all four Tribes are parties to the standard-form 2015 gaming compact with the State of New Mexico. *See* Compl. ¶ 38.

[15] The Tribes fault Kalshi for "tellingly ignor[ing]" *Ho-Chunk*, Br. at 28, but Kalshi addressed that decision—from which it has sought appeal—in its Motion. MTD at 14 n.7.

[16] Proposed amici cite cases concerning interstate compacts, arguing that they are "binding on third-parties." Dkt. No. 48-1, at 5-6 (citing *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938)). In fact, *Hinderlider* held only that the interstate compact at issue was binding "upon the subjects and citizens" of the states that were parties to the compact. *Hinderlinder*, 304 U.S. at 106. *Hinderlider* concerned whether a private claimant within one of those states was bound by its provisions; it does not support the assertion of enforcement authority against unrelated outsiders. The other cases proposed amici cite are similarly inapposite. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994) (entity created by interstate compact did not have Eleventh Amendment immunity from suit); *Entergy Arkansas, Inc. v. Nebraska*, 358 F.3d 528, 542 (8th Cir. 2004) (commission created by interstate compact among five states had authority to enforce performance "***by the party states***" of their obligations under the compact (emphasis added)).

betting" and does not accept the Tribes' characterization of its event contracts as such. The Tribes also contend that the Compact "incorporates all the Tribal Gaming Laws for class III gaming," so that any violation by Kalshi of those laws also violates the Compact. *Id.* But the provisions they cite oblige ***the Tribes*** to adopt and enforce their own Ordinances and Regulations. *Id.* (citing Compact §§ 2(Q), 4(A)(1), 4(D)). They impose no requirements on Kalshi or any other third party. *See* MTD at 24-25; *Blue Lake Rancheria*, 2025 WL 3141202, at *5 (compact provisions that "do not mention third parties" cannot be read to "prohibit [the third party's] conduct").

The Tribes also cite various provisions of the Compact that refer to ***tribal*** regulation and operation of class III gaming, Br. at 28 (citing Compact §§ 1(E)-(F)), or impose requirements ***on the Tribes*** with respect to the conduct of class III gaming, *id.* §§ 3(A), 4(B)(1), 4(B)(15). None of the provisions require nonmembers like Kalshi to do anything. And the fact that the Compact does not ***authorize*** Kalshi's conduct does not mean that it ***prohibits*** it—a crucial distinction the Tribes ignore. *See* Br. at 27-28; MTD at 24-25 (citing *Blue Lake Rancheria*, 2025 WL 3141202, at *5).[17] The Compact claims should be dismissed.

II. THE MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED.

A preliminary injunction is "an extraordinary remedy." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). It "may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 22. The movant must establish four factors to secure an injunction: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest. *Id.* at 20. "An injunction can issue only if ***each*** factor is established." *Denver Homeless Out Loud v. Denver*, 32

[17] Nor is anything left of the Section 17 theory the Complaint advanced, which the Consolidated Brief abandons outright. Br. at 29 ("The Tribes do not assert that Kalshi has violated [Section 17] of the Compact.").

F.4th 1259, 1277 (10th Cir. 2022) (emphasis added). "[A]ny modified test which relaxes one of the prongs for preliminary relief . . . is impermissible." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016).[18]

The Tenth Circuit applies especially close scrutiny to requests for injunctions that "alter the status quo" and those that "afford the movant substantially all the relief" recoverable after a full trial. *O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1011 (10th Cir. 2004) (en banc) (McConnell, J., concurring). The injunction the Tribes request would do both. Notably, the only two courts to have considered tribal requests for a preliminary injunction against Kalshi have denied those requests, and the Tribes here fail to make a showing that would warrant a different result. *See Ho-Chunk*, 2026 WL 1284077, at *11 (court "not persuaded that interfering with the status quo, particularly in light of the substantial legal and regulatory questions involved, is appropriate or even necessary"); *Blue Lake Rancheria*, 2025 WL 3141202, at *1, *8 (tribes "have not shown a likelihood of success on the merits" of their claim under IGRA).

A. <u>The Tribes Fail to Establish a Likelihood of Success.</u>

For all of the reasons set forth above and in Kalshi's Motion to Dismiss, the Tribes are not likely to succeed in their claims. On that ground alone, their request for a preliminary injunction should be denied.

The Tribes baldly assert they are likely to succeed because Kalshi is "plainly" violating their laws by offering "mobile sports betting." Br. at 31. But in support, they have submitted legal opinions offered by fact witnesses who proclaim that the trades they or other declarants placed "constitute Class III gaming" that "violate IGRA, the Compact, and the Ordinance." Decl. of

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[18] The Tribes invoke *Nova Health Systems v. Edmondson*, 460 F.3d 1295 (10th Cir. 2006), for the proposition that the likelihood-of-success showing is relaxed where the remaining factors tip decisively in the movant's favor. *Id.* at 1298 n.6. But in 2016, the Tenth Circuit abrogated that "modified test" as "inconsistent" with Supreme Court jurisprudence. *Diné*, 839 F.3d at 1282.

Maria Ramos ¶ 21, Dkt. No. 23-1; Decl. of Sylvia Castillon ¶ 6, Dkt. No. 23-3; Decl. of Terrence M. Bailey ¶ 17, Dkt. No. 23-5. Despite the plain language of UIGEA, the declarants also assume that Kalshi's event contracts are "wagers" or "sports bets." Decl. of Maria Ramos ¶¶ 8, 21, Dkt. No. 23-1; Decl. of Sylvia Castillon ¶ 6, Dkt. No. 23-3; Decl. of Terrence M. Bailey ¶¶ 12, 17, Dkt. No. 23-5; Decl. of Trista Tafoya ¶ 18, Dkt. No. 23-7. Legal conclusions masquerading as declaration testimony are not entitled to any evidentiary weight, particularly where the proponent of that testimony is asking the Court to enter an injunction that would alter the status quo. *See Muhammad v. United States*, 295 F. App'x 289, 291 (10th Cir. 2008) (affirming denial of injunctive relief where support offered by movant consisted of "merely conclusory reiterations of the requirements for an injunction couched in the form of declarative statements" (citation omitted)); *United States v. DeLeon*, 423 F. Supp. 3d 1210, 1233 (D.N.M. 2019) (courts should disregard opinion testimony stating legal conclusions).

At a minimum, given the mixed results that states and tribes challenging Kalshi have achieved across the country, the Tribes cannot show they are likely to succeed on the merits, let alone the "plain" violation they assert. *Compare, e.g.*, *Blue Lake Rancheria*, 2025 WL 3141202, at *4-6 (denying tribes' motion for a preliminary injunction where neither their compact nor their secretarial procedures prohibited Kalshi's conduct, and UIGEA—not IGRA—governs transactions on a DCM); *Ho-Chunk*, 2026 WL 1284077, at *11-12 (denying tribe's motion for a preliminary injunction against Kalshi's sports event contracts in light of "the substantial legal and regulatory questions involved"); *Flaherty*, 172 F.4th at 229 (CEA gives CFTC "exclusive jurisdiction" and therefore preempts state regulation of DCM trading); *Orgel*, 2026 WL 474869, at *12 (concluding Kalshi lawfully operates a nationwide, CFTC-regulated exchange); *Johnson*, 2026 WL 1223373, at *6-8 (same); *Minnesota*, 2026 WL 2150211 (state regulation of event contracts traded on DCMs expressly preempted by the CEA's exclusive-jurisdiction provision), *with, e.g.*, *KalshiEX, LLC v. Martin*, 793 F. Supp. 3d 667 (D. Md. 2025), *appeal pending*, No. 25-1892 (4th Cir.); *KalshiEX LLC v. Schuler*, 2026 WL 657004 (S.D. Ohio Mar. 9, 2026), *appeal pending*, No. 26-3196 (6th Cir.). In fact, the only authority to have squarely addressed the lawfulness of Kalshi's event contracts is the CFTC, which has repeatedly advised courts that they are swaps falling within its exclusive jurisdiction. *See* Amicus Br. of CFTC at 19, 21, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026), Dkt. No. 38.2 (sports-event contracts fall "comfortably" within the CFTC's exclusive jurisdiction, which "preempts application of state gambling laws to event contracts trading on DCMs").[19]

B. The Tribes Will Not Suffer Irreparable Harm Absent a Preliminary Injunction.

To be irreparable, "an injury must be certain, great, actual and not theoretical." *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) (citation omitted). Harm that is "merely serious or substantial" will not do. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001). And a movant that has not shown a likelihood of success on the merits, as the Tribes have not, is "not entitled to a presumption of irreparable injury." *Schrier*, 427 F.3d at 1266. The movant must also show "a clear and present need for equitable relief to prevent" the asserted harm. *Id.* at 1267 (citation omitted); *see also GTE Corp. v. Williams*, 731 F.2d 676, 678 (10th Cir. 1984) (waiting "nearly a year before seeking any relief . . . undercuts the sense of

[19] The Tribes take issue with the CFTC's authorization of Kalshi's contracts by contending that Kalshi's sports event contracts contravene 17 C.F.R. § 40.11. Br. at 38; *see also* Dkt. No. 48-1, at 16-19 (proposed amici arguing that the CEA and § 40.11 "prohibit [listing] gaming contracts" and disputing the CFTC's interpretation of the term "swaps"). But the Administrative Procedure Act ("APA") is the appropriate means for challenging the agency's determinations. *See* 5 U.S.C. §§ 702, 706(2); *Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 615 (2012) (allowing the Tribes to circumvent the APA would subject parties "to conflicting interpretations of federal law by several different courts (and the agency), thereby threatening to defeat the uniformity that Congress intended"). The Tribes cannot bring "a collateral proceeding to end-run the procedural requirements governing appeals of administrative decisions." *Big Lagoon Rancheria v. California*, 789 F.3d 947, 953 (9th Cir. 2015) (en banc) (citation modified).

urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury" (citation omitted)). The Tribes have not shown irreparable harm.

As a preliminary matter, the Tribes' own leisurely timeline defeats any claim that they are facing irreparable or imminent harm. Kalshi began offering sports event contracts in January 2025. The Tribes filed their Complaint roughly sixteen months later, in May 2026—and waited another two months, until the end of July 2026, to move for preliminary relief. That delay belies any claim of urgency and forecloses a finding of irreparable harm.

Regardless, Kalshi's operation poses no threat to the Tribes' "sovereignty and governmental authority." Br. at 33. A private business cannot infringe on tribal sovereignty, particularly where it has never set foot on tribal lands. *Cf. Muscogee (Creek) Nation v. Henry*, 2010 WL 1078438, at *4 (E.D. Okla. Mar. 18, 2010) (finding no irreparable injury to tribe's sovereignty where the alleged offense did not take place on Indian lands and was governed by state law). The Tribes offer no authority to the contrary: All of the cases they cite involve one sovereign (a state) encroaching on the authority of another sovereign (a tribe).[20] Br. at 30. None involves a purported injury to sovereignty caused by a private business declining to submit to tribal oversight.

The Tribes also suggest that they would suffer harm due to purported revenue loss, including the loss of "exclusivity" and their "sole proprietary interest" in gaming revenues. Br. at 34. The Tribes offer no concrete evidence sufficient to establish the likelihood of imminent and irreparable harm to their revenues that would make it "difficult or impossible" for them to "restore the status quo" should they ultimately prevail, *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189

[20] *See Prairie Band*, 253 F.3d at 1237-38, 1250-51 (state imposing on tribe's "traditional governmental function"); *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015) (state improperly prosecuting offenses that occurred on Tribal land); *Seneca-Cayuga Tribe of Oklahoma v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989) (state enforcing against tribal bingo operations).

(10th Cir. 2003), and in any event, any alleged injury to the Tribes' revenues "can be quantified in damages" and therefore cannot provide the basis for a preliminary injunction, *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 356 F.3d 1256, 1266 (10th Cir. 2004). *See also Heideman*, 348 F.3d at 1189 ("It is also well settled that simple economic loss usually does not, in and of itself, constitute irreparable harm[.]").

C. The Balance of Equities Does Not Favor a Preliminary Injunction.

The Tribes also fail to show that their asserted injury "outweighs the harm that the preliminary injunction may cause the opposing party." *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 752 (10th Cir. 2024). The damage to Kalshi from a preliminary injunction that granted the Tribes the relief they request would be severe.

The Tribes assert that Kalshi could meet any "compliance burden" through geofencing, which they breezily claim is "straightforward to implement." Br. at 35. They point to the fact that geofencing is used in other industries as evidence that Kalshi can easily implement it here. But none of those examples involve the business of an exchange, which is continuously matching anonymous two-sided orders at a price set by national supply and demand. Br. at 5, Dkt. No. 23-8 ¶¶ 13, 19-21. The only declaration the Tribes submit that substantively addresses geofencing provides only general information and does not even pretend to address the realities of Kalshi's platform architecture, its order-matching engine, its centralized clearing function, or its obligations as a DCM. Dkt. No. 23-8 ¶¶ 10-12, 16-18, 23-25. The declarant offers no estimate of cost or implementation time and no discussion of how to manage open positions, stating only in conclusory fashion that "a large business with an online retail presence should be easily able to geofence around Indian lands." *Id.* ¶ 26. That sort of uninformed and unsupported assertion does not carry the Tribes' burden.[21]

The Tribes' request is also unworkably vague and broad. The Tribes ask the Court to enter a sweeping injunction "enjoining Kalshi from operating" what they call "mobile sports betting" on their lands. Br. at 39. But they do not say exactly what they want the Court to order Kalshi to do. Under court orders entered in certain state proceedings, Kalshi has expended significant resources to implement in certain jurisdictions geofencing that seeks to restrict the ***initiation*** of trades based upon user location at the time of initiation. But the Tribes' request is seemingly broader: By asking the Court to enjoin Kalshi from "operating" on tribal lands, the Tribes are asking the Court to prevent anyone with an open position on a Kalshi event contract from closing out that position, or possibly from even continuing to hold it, while on tribal lands. The Tribes do not even begin to confront the extraordinary difficulties such an injunction would create, simply asserting in conclusory fashion that "Kalshi could easily avoid operating on the Tribes' Indian lands by geofencing." Br. at 4.

Such a broad-ranging injunction would subject Kalshi to substantial commercial and operational harm. Kalshi would be required to take extraordinarily disruptive steps, impairing existing contractual obligations among traders, impacting counterparties to positions opened by users located on tribal lands (no matter where those parties were eventually located), and

[21] Neither does the Tribes' comparison to the geofencing capabilities of DraftKings, FanDuel, and Jackpocket prove anything. Br. at 36. Those are sportsbooks and lottery couriers built from inception to operate state-by-state, with location-verification obligations baked into their state licensing conditions. Kalshi is a federal DCM built—as the CFTC requires—to operate nationally, matching anonymous orders in a single order book at a single national price. *See* 7 U.S.C. § 1a(51)(A) (defining "trading facility" under CEA as "a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions . . . through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm"); *see also* 7 U.S.C. §§ 1a(6), (37) (defining boards of trade such as DCMs as trading facilities).

potentially exposing Kalshi to liability. The resulting market uncertainty would cause severe reputational harm and an irreparable loss of goodwill not remediable after trial. *See Flaherty*, 172 F.4th at 231-32 (compliance with comparable injunction would inflict "economic and reputational harm, including loss of business and goodwill" on Kalshi); *Strickland v. Madden Sales & Serv. Inc.*, 2020 WL 2814434, at *4 (D.N.M. May 8, 2020) ("Loss of customers, loss of goodwill, and threats to a business' viability have been found to constitute irreparable harm." (citation omitted)).

The requested injunction would also require Kalshi to discriminate among users and restrict access to its market on the basis of geographic location, placing Kalshi's practices in considerable tension with the CFTC's Core Principles requiring "impartial access" and "non-discriminatory" criteria. 17 C.F.R. §§ 38.150, 38.151(b). The Tribes dismiss this concern as Kalshi's "own *ipse dixit*." Br. at 39 (citing *Schuler*, 2026 WL 657004, at *9). But the CFTC itself has squarely rejected the position that a DCM can provide impartial access while blocking traders in particular jurisdictions. CFTC Amicus Br. 26-27, *KalshiEX LLC v. Schuler*, No. 26-3196 (6th Cir. May 12, 2026), Dkt. 31. Kalshi has restricted access in recent months only under compulsion, in response to court orders entered against it in Nevada, Michigan, and, shortly, in Washington. Litigation over those orders is ongoing, and the need for geolocation remains contested.

In fact, on two occasions in the past two months, the CFTC has invoked its emergency authority under Section 8a(9) of the CEA to order Kalshi ***not*** to restrict access to its exchange or unwind executed trades. After a Michigan state court ordered Kalshi to implement geolocation-based access controls and to void, cancel, and refund trades entered into by traders located in Michigan, Kalshi filed with the CFTC an emergency rule providing for the liquidation of those previously executed contracts. Letter from Richard Heaslip, Chief Regulatory Officer, to CFTC (July 12, 2026), https://perma.cc/BW2Y-NMRT. The CFTC stayed that rule and directed Kalshi instead to fulfill the affected trades in accordance with its normal practices. Christopher J.

Kirkpatrick, CFTC, *Order Staying Emergency Rule Filed by KalshiEX LLC and Directing Kalshi to Fulfill Open Trades Involving Michigan Residents* (July 14, 2026), https://perma.cc/GV5X-M9PQ. Likewise, after Kalshi notified the CFTC of a market emergency arising from the State of New York's request for an order prohibiting Kalshi from offering event contracts, the CFTC directed Kalshi to continue performing its functions as an exchange in accordance with the Core Principles and its normal practices. Christopher J. Kirkpatrick, CFTC, *Order Directing Kalshi to Continue Exercising DCM Functions* (Aug. 11, 2026), https://perma.cc/DY95-8BNC. Measures taken to comply with court-ordered geofencing and unwinding of trades have already placed Kalshi in direct conflict with its obligations to its federal regulator.

Finally, Kalshi faces an increased risk of harm from the hasty imposition of a preliminary injunction in this case given the unique status of the movants. Because the Tribes can claim immunity from suits for money damages, even if Kalshi ultimately prevailed, the costs of complying with an injunction could never be recovered. *See Chamber of Commerce of the United States v. Edmondson*, 594 F.3d 742, 770-71 (10th Cir. 2010) ("[i]mposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury"); *Pueblo of Pojoaque v. New Mexico*, 2015 WL 10818855, at *9 (D.N.M. Oct. 7, 2015) (applying the principle in the tribal gaming context). That asymmetry also tips the balance of equities in Kalshi's favor.

D. A Preliminary Injunction Would Not Be in the Public Interest.

The Tribes ask the Court to find a public interest in enforcing IGRA, against a party IGRA does not govern, in a case where they have pleaded no IGRA claim. Br. at 36-39. But the public interest this motion actually implicates is the one Congress wrote into the CEA—the interest in a uniform, national derivatives regime set up "to serve the public interest." 7 U.S.C. § 5(b). That is what should guide the Court's analysis of the motion. A court order selectively prohibiting Kalshi from offering its products while in full compliance with the regulatory scheme Congress established would undermine that national framework; upset the delicate balance that Congress carefully established in IGRA, UIGEA, and the CEA; and sow confusion in the derivatives markets—beyond event contracts—that depend on uniform national rules.

An injunction would also harm nonparties. *See Herrera v. Santa Fe Pub. Schs.*, 792 F. Supp. 2d 1174, 1198 (D.N.M. 2011) ("The 'public interest' inquiry examines" impact "on nonparties rather than on the parties"); *HighRadius Corp. v. Esker, Inc.*, 2026 WL 2138256, at *6 (D. Colo. June 10, 2026) (harm resulting from an injunction is "greater" where the injunction "would not only harm [the party], but also the non-party"). Pausing or unwinding positions in order to stop "operating" on the Tribes' lands would be highly disruptive, threatening users' ability to rely on being able to rapidly hedge their risks in response to constantly-evolving market conditions—no matter their location. *See KalshiEX LLC v. Hendrick*, No. 2:25-cv-00575, 2025 WL 1073495, at *8 (D. Nev. Apr. 9, 2025) ("Additionally, third parties' contracts and investment expectations would be disrupted if Kalshi were forced to terminate its existing contracts for Nevada-based users. And that may impact counterparties to those contracts who are neither based in Nevada nor signed the event contracts while in Nevada."), *preliminary injunction dissolved on other grounds*, 817 F. Supp. 3d 1014 (D. Nev. 2025); *Presidential Hosp., LLC v. Wyndham Hotel Grp., LLC*, 2018 WL 2604831, at *23 (D.N.M. June 2, 2018) ("Enforcing the Contract favors the public interest."). The public interest does not favor relief that falls hardest on third parties who have no part in this dispute.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Complaint in its entirety with prejudice and deny the Motion for Preliminary Injunction in its entirety.

Dated: August 19, 2026

Respectfully submitted,

/s/ Olivia S. Choe

SNELL & WILMER L.L.P.
Jennifer Hadley Catero
Erica J. Stutman
1 E. Washington St., Suite 2700
Phoenix, Arizona 85004
Telephone: 602.382.6000
Facsimile: 602.382.6070
jcatero@swlaw.com
estutman@swlaw.com

MILBANK LLP
Olivia S. Choe (*pro hac vice*)
Joshua B. Sterling (*pro hac vice*)
1101 New York Avenue, NW
Washington, D.C. 20005
Telephone: 202.835.7500
Facsimile: 202.263.7586
ochoe@milbank.com
jsterling@milbank.com

Grant R. Mainland (*pro hac vice*)
Katherine Kelly Fell (*pro hac vice*)
55 Hudson Yards
New York, NY 10001-2163
Telephone: 212.530.5000
Facsimile: 212.530.5219
gmainland@milbank.com
kfell@milbank.com

Attorneys for Defendants Kalshi, Inc. and KalshiEX, LLC

CERTIFICATE OF SERVICE

I hereby certify that, on this day, I caused a true and correct copy of the foregoing document to be filed with the clerk's office using this Court's CM/ECF system.

This 19th day of August 2026.

/s/ Olivia S. Choe
Olivia S. Choe

Counsel for Defendants Kalshi, Inc. and KalshiEX, LLC