No. 25-7504

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BLUE LAKE RANCHERIA, CHICKEN RANCH RANCHERIA OF ME-WUK INDIANS, and PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS,

Plaintiffs-Appellants,

v.

KALSHI INC., KALSHIEX LLC, ROBINHOOD MARKETS, INC., and ROBINHOOD DERIVATIVES LLC,

Defendants-Appellees.

On Appeal from an Order of the United States District Court for the Northern District of California (No. 25-cv-6162) (Corley, J.)

BRIEF OF MASSACHUSETTS, CALIFORNIA, 25 OTHER STATES, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF APPELLANTS AND REVERSAL

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INTERESTS OF AMICI CURIAE

Massachusetts, California, Alabama, Arizona, Arkansas, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, South Dakota, Utah, Vermont, Washington State, and the District of Columbia (collectively, Amicus States) respectfully submit this brief in support of appellants and reversal. *See* Fed. R. App. P. 29(a)(2).

The Amicus States have varying approaches to the issue of sports wagering, reflecting their respective policy judgments. In some states, sports wagering is regulated and offered only by licensed sportsbooks; in others, it is illegal. Through the framework of cooperative federalism established by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, these varied approaches also apply to sports wagering on Indian lands within the Amicus States. That is because, under IGRA, sports wagering is legal on Indian lands only if it is legal in the state where such lands are located. *See* 25 U.S.C. § 2710(d)(1)(B). The Court's resolution of this case thus has the potential to affect not just tribal sovereignty, but also the states' authority to regulate gambling within their

borders. The claimed ability of defendants Kalshi Inc. and KalshiEX LLC (collectively, Kalshi) to offer sports wagering on the Plaintiff Tribes' lands—irrespective of tribal authority and state law—disregards the sovereign powers of both governments. The states therefore have a significant interest in the outcome of this case—one that overlaps with, but differs in certain respects from, that of the Plaintiff Tribes.

The Amicus States submit this brief to defend this significant state interest, and to explain why Kalshi's understanding of federal law is wrong. As Kalshi would have it, a company that lists classic sports wagers on an exchange registered with the Commodity Futures Trading Commission (CFTC) may completely sidestep IGRA, tribal authority, and state law—not to mention numerous other federal statutes. The basis of Kalshi's sweeping assertion is an atextual and implausible interpretation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-203, 124 Stat. 1376 (2010). Even though Dodd-Frank does not mention sports wagering—and even though such wagering was illegal in all but a handful of states at the time of Dodd-Frank's passage—Kalshi suggests that the statute legal-

ized sports wagering nationwide, including on Indian lands, by transforming sports wagers into "swaps" that must now be traded exclusively on CFTC-regulated exchanges. But Dodd-Frank did not impliedly repeal (or impliedly preempt) the myriad laws that otherwise apply to sports wagering. Those laws continue to safeguard the Amicus States' longstanding authority to protect their citizens from illicit gambling and the harms associated with legalized gambling, and the Court should not allow Kalshi's novel theory to sweep them aside.

BACKGROUND

I. State and Federal Regulation of Sports Wagering

The Amicus States administer laws—and have lived through history—that Kalshi now seeks to wish away. For more than a century, states have legislated around sports wagering. During most of that time, and in most jurisdictions, state law prohibited sports wagering entirely; more recently, dozens of states have allowed such wagering but regulated it closely. *See* John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates Its Most Lucrative Vice*, 2020 Wis. L. Rev. 907, 912-937 (2020). Over the years, federal law has built on this foundation of state law, complementing it with

additional enforcement powers and, for a time, freezing it in place. *See id.* at 950-954. At no point, however, has federal law been more permissive regarding sports wagering than state law. This section lays out that history in greater detail.

A. Early State Prohibitions and the Federal Wire Act

Although major college athletics arose in the late 19th century, and major professional sports leagues at the turn of the 20th century, every state barred sports wagering until Nevada legalized it in 1949. Marc Edelman, *Regulating Sports Gambling in the Aftermath of* Murphy v. National Collegiate Athletic Association, 26 Geo. Mason L. Rev. 313, 315-317 (2019). In the ensuing 40 years, only three other states followed Nevada's lead—and only in very limited ways, such as through the establishment of state-sponsored sports lotteries. *Id.* at 318; John T. Holden et al., *Legalized Sports Wagering in America*, 44 Cardozo L. Rev. 1383, 1391-1392 (2023).

Federal law eventually supplemented state prohibitions by criminalizing interstate attempts to circumvent state law. In 1961, for example, Congress adopted the Wire Act, 18 U.S.C. § 1084. The act, which remains in effect today, bars the use of "a wire communication facility"

by any person "in the business of betting or wagering" to transmit certain information—including "bets or wagers on any sporting event or contest," orders of payment "as a result of [any such] bets or wagers," or "information in assisting in the placing of bets or wagers"—across state lines. *Id.* §1084(a); *see, e.g.*, *United States v. Lyons*, 740 F.3d 702, 716 (1st Cir. 2014) (holding that the internet is a "wire communication facility"). As the House Report accompanying the Wire Act explained, the statute was intended to "assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, book making, and like offenses." H.R. Rep. No. 87-967, at 1-2 (1961); *see* G. Robert Blakely & Harold A. Kurland, *Development of the Federal Law of Gambling*, 63 Cornell L. Rev. 923, 965-967 (1978). The act's safe-harbor provision exempts otherwise-covered communications if "(1) betting is legal in both the place of origin and the destination of the transmission; and (2) the transmission is limited to mere information that assists in the placing of bets, as opposed to including the bets themselves." *United States v. Cohen*, 260 F.3d 68, 73-75 (2d Cir. 2001) (citing 18 U.S.C. § 1084(b)).

Other federal gambling laws adopted around the time of the Wire

Act likewise bolstered state prohibitions of sports wagering. For example, a statute enacted in 1961 prohibits the interstate transportation of sports wagering slips. 18 U.S.C. § 1953(a). And a law passed in 1970 bars the operation of an "illegal gambling business" that violates "the law of a State" where "it is conducted." 18 U.S.C. § 1955(b)(1)(i). Like the Wire Act, these other laws remain on the books.

B. IGRA

In the late 1980s, the Supreme Court cast doubt on states' ability to regulate sports wagering within their borders by holding that they lacked civil regulatory authority over gaming on Indian lands. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221-222 (1987). Congress responded by enacting IGRA the next year. In broad strokes, IGRA allows tribes to regulate gaming activity, including sports wagering, on tribal lands, provided "the type of activity occurring is lawful in the state in which the tribal lands are located." Holden & Edelman, *supra*, at 944-945.

The extent of state authority under IGRA depends on the nature of the gambling activity. As relevant here, sports betting falls into "the most closely regulated" category—what IGRA calls "Class III gaming."

Michigan v. Bay Mills Indian Cmty., 572 U.S. 785, 785 (2014); *see* 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4(c). IGRA permits Class III gaming only on Indian lands "located in a State that permits such gaming." 25 U.S.C. § 2710(d)(1)(B). And even then, such gaming must take place in accordance with either a compact between the relevant tribe and surrounding state or procedures prescribed by the Secretary of the Interior. *Id.* § 2710(d).

IGRA ensures that states' policy choices about sports wagering are effective within their borders, including on Indian lands. If a state legalizes sports wagering, it must engage in good faith with tribes who wish to offer such wagering; but if a state prohibits sports wagering, the prohibition applies equally on Indian lands. *Id.* § 2710(d)(1)-(3).

C. PASPA and UIGEA

In the early 1990s, professional sports leagues expressed concern to Congress that a handful of additional states were considering legalizing sports wagering. *See* Holden & Edelman, *supra*, at 919-920; Edelman, *supra*, at 318-320. Congress responded in 1992 by passing the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 3701 *et seq.* The act barred states from "authoriz[ing]" wagering on amateur

or professional sports. 28 U.S.C. § 3702. But it exempted then-existing state authorizations—including, for example, Nevada's authorization of various forms of sports wagering. *Id.* § 3704(a); Edelman, *supra*, at 321. Consequently, PASPA "led to a monopoly on sportsbook style wagering for the state of Nevada." Holden & Edelman, *supra*, at 920.

While PASPA and state law significantly restricted sports wagering as the country entered the internet era, illicit sportsbooks, particularly those located offshore, began to appear online. *See* H.R. Rep. No. 109-412, pt. 1, at 8-9 (2006) (noting that these websites "operate[d] from offshore locations" effectively "beyond the reach of U.S. regulators and law enforcement"). Congress debated these enterprises—and the enforcement challenges they created—for nearly a decade beginning in the late 1990s. *See* Brandon P. Rainey, *The Unlawful Internet Gambling Enforcement Act of 2006: Legislative Problems and Solutions*, 35 J. Legis. 147, 148-150 (2009); Holden & Edelman, *supra*, at 921.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. § 5361 *et seq.*, emerged from these debates. Unlike the laws canvassed above, "UIGEA does not make gambling legal or illegal directly." *California v. Iipay Nation of San Ysabel*, 898 F.3d 960, 964-

965 (9th Cir. 2018). Instead, it prevents people from "using the internet to circumvent existing state and federal gambling laws." *Id.* at 965. In particular, UIGEA seeks to "suffocate [illegal] internet gambling by removing its oxygen source, specifically, the funding of online gambling accounts." Holden et al., *supra*, at 1396. To that end, the statute bars any person or entity "engaged in the business of betting or wagering" from knowingly accepting or transmitting payment or credit "in connection with . . . unlawful Internet gambling." 31 U.S.C. § 5363. The statute defines "unlawful Internet gambling" by reference to existing federal and state law as a "bet or wager" that is "unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made." *Id.* § 5362(10)(A).

By its plain terms, UIGEA does not affect the substance of underlying state or federal law. *See* 31 U.S.C. § 5361(b) ("No provision of [UIGEA] shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."). That noninterference with existing law specifically extends to IGRA: UIGEA expressly provides that "[n]o provision of [UIGEA's civil remedies] section shall be construed as

altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act." *Id.* § 5365(b)(3)(B). In this way, the statute adheres to the "general rule" that "States should have the primary responsibility for determining what forms of gambling may legally take place within their borders." H.R. Rep. No. 109-412, pt. 2, at 8 (quoting 15 U.S.C. § 3001).

D. *Murphy* and Its Aftermath

In 2018, the Supreme Court changed the legal landscape, holding that PASPA's attempt to "prohibit[] state authorization of sports gambling" violated the Tenth Amendment's anticommandeering principle. *Murphy v. NCAA*, 584 U.S. 453, 474 (2018). In reaching that conclusion, the Court observed that PASPA's prohibition was "exactly the opposite" of the "coherent federal policy" embodied in other statutes, like the Wire Act, that "respect the policy choices of the people of each State." *Id.* at 484. The Court left the door open to future Congressional action, observing that Congress could always "regulate sports gambling directly," *id.* at 486, rather than, as in PASPA, trying to "dictate[] what a state legislature may and may not do," *id.* at 474. In the absence of such direct Congressional regulation, however, the Court emphasized that "each

State is free to act on its own." *Id.* at 486.

States began to act almost immediately. Holden & Edelman, *supra*, at 932. Since *Murphy*, more than three dozen states and the District of Columbia have recalibrated their approach to sports wagering, moving from a policy of prohibition to a policy of legalization, licensing, and oversight. Am. Gaming Ass'n, *State of the States 2025*, at 12-13 (May 2025), perma.cc/J27S-WLSB. Congress, by contrast, has considered—but has not meaningfully advanced—legislation to address sports wagering. *E.g.*, SAFE Bet Act, S. 1033, 119th Cong. (2025) (introduced).

II. Kalshi's Unlicensed Sports-Wagering Platform

Kalshi is not licensed to offer sports wagers by any of the three Plaintiff Tribes. *See* 4-ER-568-569, 579, 588-589, 600-601. Nor does California law permit sports wagering. *See* Cal. Const. art. IV, § 19(e); Cal. Penal Code § 337a(a)(1), (6). Indeed, just a few years ago, California voters overwhelmingly rejected proposed constitutional amendments that would have legalized sports wagering, including on Indian lands.[1]

[1] *See Legalize Sports Betting on American Indian Lands Initiative*, 2022 Cal. Stat. 26 (presented as Prop. 26 and rejected by voters in the general election of Nov. 8, 2022); *Legalize Sports Betting & Revenue for Homelessness Prevention Fund Initiative*, 2022 Cal. Stat. 27 (presented as Prop. 27 and rejected by voters in the general election of Nov. 8, 2022).

Nevertheless, Kalshi currently makes a range of sports wagers available on the Plaintiff Tribes' lands through its digital exchange. These offerings—which Kalshi introduced in late January 2025, and which it has since expanded significantly—include traditional money-line wagers (*i.e.* bets on which team will win a game); point-spread wagers (*i.e.*, bets on whether a favored team will win by more or less than oddsmakers predict); and proposition bets (*i.e.*, bets on the performance of individual athletes within a game). 3-ER-308-361.

Kalshi claims that it has authority to make these offerings under the Commodity Exchange Act (CEA), 7 U.S.C. § 1 *et seq.* First enacted in 1936, the CEA governs the trading of derivatives like futures and options on regulated exchanges. *See* Pub. L. No. 74-675, 49 Stat. 1491. As relevant here, Dodd-Frank amended the CEA in 2010 to cover "swaps"—*i.e.*, agreements between two parties to exchange (or swap) financial obligations. Pub. L. No. 111-203, tit. VII, pt. II, 124 Stat. at 1658-1754; *see Thrifty Oil Co. v. Bank of Am. NT&SA*, 322 F.3d 1039, 1042 (9th Cir. 2002) (explaining swaps). Congress's aim in adding swaps to the CEA was to regulate the opaque derivatives markets that contributed to the 2008 financial crisis. *See* Pub. L. No. 111-203, pmbl., 124 Stat. at 1376;

id. § 701, 124 Stat. at 1641. But Kalshi claims that these amendments had another effect: surreptitiously legalizing sports gambling nationwide. In particular, Kalshi maintains that sports wagers are "swaps" that are exempt from all federal, state, or tribal gaming regulations when traded on a CFTC-registered contract market—as all swaps must be, under Dodd-Frank. D. Ct. Doc. 44, at 8-10, 16-17; *see* 7 U.S.C. § 2(e).

Kalshi has not cited any statutory text, legislative history, stakeholder statements, or even media coverage suggesting that members of Congress or the public in 2010 thought Dodd-Frank would affect sports wagering—let alone that it would strip states and Indian tribes of their regulatory authority by legalizing such wagering nationwide. That silence is telling: Congress debated Dodd-Frank for nearly two years in a process closely covered by both traditional media and the financial trade press.[2] In multiple lawsuits now pending across the country, however, the only legislative history referencing sports wagering that any party has identified is a short discussion between two Senators confirming

[2] *See generally The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, Cong. Rsch. Serv. (April 21, 2017) (Dodd-Frank Background), https://digital.library.unt.edu/ark:/67531/metadc1042500/m1/1.

that the Act would have nothing to do with the topic. *See* 156 Cong. Rec. S5907 (2010) (Sens. Lincoln and Feinstein).

Indeed, the claim that Dodd-Frank addressed sports wagering is novel even for Kalshi itself. In 2024, Kalshi litigated whether it may offer contracts conditioning payout on the outcome of certain federal elections on its CFTC-registered exchange. In asserting the legality of its election contracts, Kalshi conceded that contracts contingent on the result of a sporting event were not within Dodd-Frank's ambit. *See* Br. of Appellee KalshiEX LLC, 2024 WL 4802698, at *17, *41, *44-45, *KalshiEX LLC v. CFTC*, No. 24-5205 (D.C. Cir. Nov. 15, 2024) ("[A]s the legislative history directly confirms, Congress did not want sports betting to be conducted on derivatives markets.").

Early last year, however, Kalshi began to sing a different tune. Though it was not licensed by any of the 39 states that allow sports wagering, Kalshi now offers such wagers on the lands of each of the Plaintiff Tribes and in all of the Amicus States.

III. Nationwide Litigation Landscape

Kalshi's choices have drawn the attention of state authorities. At least nine states have sent Kalshi cease-and-desist letters ordering it to

stop offering sports wagering within their borders. Kalshi has responded with litigation in seven states seeking to enjoin state enforcement.[3] In Nevada and Maryland, the states have successfully defeated preliminary injunction motions; denials of those motions in both cases are now on appeal.[4] In New Jersey, Kalshi has obtained a preliminary injunction against state enforcement; that order, too, is on appeal.[5] Broad bipartisan coalitions of states have filed amicus briefs in these appeals in defense of state law and against Kalshi's novel and sweeping

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[3] *KalshiEX LLC v. Hendrick*, No. 2:25-cv-575 (D. Nev.); *KalshiEX LLC v. Flaherty*, No. 1:25-cv-2152 (D.N.J.); *KalshiEX LLC v. Martin*, No. 1:25-cv-1283 (D. Md.); *KalshiEX LLC v. Schuler*, No. 2:25-cv-1165 (S.D. Ohio); *KalshiEX LLC v. Williams*, No. 1:25-cv-8846 (S.D.N.Y.); *KalshiEX LLC v. Cafferelli*, No. 3:25-cv-2016 (D. Conn.); *KalshiEX LLC v. Orgel*, No. 3:26-cv-34 (M.D. Tenn.).

[4] *KalshiEX LLC v. Hendrick*, No. 2:25-cv-575, 2025 WL 3286282 (D. Nev. Nov. 24, 2025), *appeal docketed*, No. 25-7516 (9th Cir.); *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667 (D. Md. 2025), *appeal docketed*, No. 25-1892 (4th Cir.).

[5] *KalshiEX LLC v. Flaherty*, No. 1:25-cv-2152, 2025 WL 1218313 (D.N.J. April 28, 2025), *appeal docketed*, No. 25-1922 (3d Cir.). In Tennessee, a district court recently entered a TRO against state enforcement pending a preliminary-injunction hearing set for January 26, 2026. *See* Temporary Restraining Order, *KalshiEX LLC v. Orgel*, No. 3:26-cv-34 (M.D. Tenn. Jan. 12, 2026) (Doc. 22).

arguments.[6]

In addition, at least one state, Massachusetts, has brought an enforcement action in state court to enjoin Kalshi from offering sports wagers in violation of state law. *See Commonwealth v. KalshiEX, LLC*, No. 2584CV02525-BLS1 (Mass. Super.). A motion for a preliminary injunction is now under advisement in that case.

As this case demonstrates, Indian tribes also have taken exception to Kalshi's violation of IGRA and their sovereignty.[7]

ARGUMENT

Sports wagering on Indian lands is prohibited unless offered in compliance with IGRA's framework of cooperative federalism. By its plain terms, UIGEA does not affect that framework, and nothing in the CEA impliedly repeals IGRA or shield's Kalshi's conduct. The district

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[6] Br. of Amici Curiae of Nevada, Ohio, 36 Other States, and the District of Columbia Supporting Appellees, *KalshiEX LLC v. Martin et al.*, No. 25-1892 (4th Cir. Dec. 22, 2025) (Doc. 41-1); Br. of Amici Curiae of Nevada, Ohio, and 32 Other States, District of Columbia, and Northern Mariana Islands Supporting Appellants, *KalshiEX LLC v. Flaherty et al.*, No. 25-1922 (3d Cir. June 17, 2025) (Doc. 29).

[7] *See, e.g.*, Br. of Indian Gaming Ass'n et al., *KalshiEX LLC v. Martin et al.*, No. 25-1892 (4th Cir.) (Doc. 47); *Ho-Chunk Nation v. Kalshi Inc.*, No. 25-cv-698 (W.D. Wis.) (involving similar issues).

court's reliance on these inapplicable statutes to excuse Kalshi's violation of IGRA was legal error, and its decision should be reversed.[8]

I. IGRA bars Kalshi from offering sports wagers on Indian lands.

A straightforward application of IGRA prohibits anyone—including Kalshi—from offering sports wagering on the Plaintiff Tribes' lands.

IGRA classifies sports wagering as "Class III" gaming. 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4(c) (defining Class III gaming to include "[a]ny sports betting"). And Class III gaming is lawful on Indian lands only if it is (1) authorized by the tribe with jurisdiction over the lands, (2) "located in a State that permits such gaming," and (3) conducted consistent with a tribal-state compact (or, in the absence of a compact, consistent with secretarial procedures). 25 U.S.C. § 2710(d)(1)(A)-(C),

[8] This brief does not address the plaintiff-specific questions of (1) whether IGRA's mandates are incorporated by reference into the compact between California and plaintiff Picayune Rancheria or (2) whether violations of secretarial procedures governing gaming on the lands of plaintiffs Blue Lake and Chicken Ranch are actionable under 25 U.S.C. § 2710(d)(7)(A). If this Court holds that the district court lacked jurisdiction under § 2710(d)(7)(A), it should resolve the case on that basis alone; it should not address Kalshi's novel and sweeping legal theory and should vacate the district court's decision in relevant part. This brief also takes no position on the Plaintiff Tribes' Lanham Act claim.

(d)(7)(B)(vii). These requirements reflect IGRA's "delicate balance between the sovereignty of states and federally recognized Native American tribes." *Chicken Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1031 (9th Cir. 2022).

At minimum, Kalshi clearly violates the second criterion, because California law expressly prohibits sports wagering. Under the state constitution, California's legislature "has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey." Cal. Const. art. IV, § 19(e). California's criminal code, for its part, prohibits "[p]ool selling" and "bookmaking" and specifically bars "every person" from "lay[ing], mak[ing], offer[ing] or accept[ing] any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus." Cal. Penal. Code. § 337a(a)(1), (6). A 2000 initiative created a narrow exception to these prohibitions, allowing federally recognized Indian tribes to operate slot machines, lotteries, and certain card games pursuant to compacts with the state. Cal. Const. art. IV,

§ 19(f).[9] But that exception notably excludes sports wagering. *See id.* The upshot: sports wagering is illegal anywhere in California, and the Plaintiff Tribes' lands are therefore not "located in a State that permits [Kalshi's] gaming" within the meaning of IGRA. 25 U.S.C. § 2710(d)(1)(B).

Before the district court, Kalshi attempted to excuse its noncompliance with IGRA—and the California law incorporated into IGRA—on the ground that its exchange is located in New York. 3-ER-297. As this Court has previously explained, however, IGRA looks to the place where the bettor has "initiat[ed] a bet or wager," not the location of any "'off-site licensing or operation of the games.'" *Iipay*, 898 F.3d at 967 (quoting *Bay Mills*, 572 U.S. at 792-793); *accord, e.g.*, *S. Ute Indian Tribe v. Polis*,

[9] The growth in tribal gaming revenue under this exception has been significant. In Fiscal Year 2024, tribal gaming revenue for the region that includes all California tribal casinos and one Nevada tribal casino exceeded $12 billion, amounting to 27% of nationwide tribal gaming revenue. Nat'l Indian Gaming Comm'n, *FY 2024 Gross Gaming Revenue Report* at 7 (July 31, 2025), https://www.nigc.gov/?wpdmdl=12761&ind=1754333463993. Under state law and existing compacts, this revenue benefits all tribes in the state. *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1113 (9th Cir. 2003). The resulting tribal economic development, self-sufficiency, and strong tribal governments are consistent with IGRA's express purposes. 25 U.S.C. § 2702(1).

No. 1:24-cv-1886, 2025 WL 3459865, at *4 (D. Colo. Oct. 23, 2025), *appeal docketed*, No. 25-1440 (10th Cir.) ("[O]nline Class III gaming activity occurs where the bettor, not the server, is located when he or she initiates the wager."). In *Iipay*, that principle applied to a tribe that sought to reach beyond its borders to offer online bingo to bettors located in states where gambling is illegal. *See* 898 F.3d at 967. But the principle applies with the same force to companies, like Kalshi, that seek to reach *into* Indian lands to offer wagers administered elsewhere. Either way, the location of the wager is what matters.

Other interpretive principles confirm that IGRA's application turns on the place of the wager. For one thing, that construction harmonizes IGRA with other federal statutes: the Wire Act, for example, provides a safe harbor only if the relevant sports wager is sent "*from* a State or foreign country where betting on that sporting event or contest is legal *into a* State or foreign country in which such betting is legal." 18 U.S.C. § 1084(b) (emphasis added); *see United States v. Cohen*, 260 F.3d 68, 73-75 (2d Cir. 2001) (applying this principle to an offshore sportsbook operator). And even if there were any ambiguity on the issue, settled law would require IGRA's interpretation in favor of the Plaintiff Tribes. *See*

Stand Up for California! v. Dep't of Interior, 959 F.3d 1154, 1162 (9th Cir. 2020).

All of this adds up to a straightforward conclusion: by offering sports wagers on the Plaintiff Tribes' lands, Kalshi violates IGRA.

II. UIGEA does not excuse Kalshi's IGRA violation.

The district court held that Kalshi could escape liability under IGRA because its offerings do not violate a separate statute, UIGEA. 1-ER-10-12. But this lawsuit was brought under IGRA, and IGRA controls its resolution. Whether Kalshi is also violating UIGEA's separate bar on accepting payments associated with certain internet gambling is irrelevant, as UIGEA's text makes painstakingly clear.

A. UIGEA does not supplant IGRA's substantive prohibitions.

The plain text of UIGEA forecloses the district court's reasoning. *See Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018) (explaining that, where "the plain language of [the statute] is unambiguous," a court's analysis "begins with the statutory text, and ends there as well" (quotation marks omitted)). The statute expressly provides that "[n]o provision of [UIGEA] shall be construed as altering, limiting, or extend-

ing any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States." 31 U.S.C. § 5361(b). Another section of the statute, specifically relating to its application on Indian lands, underscores the point: "No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act." *Id.* § 5365(b)(3). These provisions are pellucid, and they are dispositive.

That UIGEA does not legalize gambling that IGRA prohibits should come as no surprise, because UIGEA was enacted as a tool to enforce—rather than displace—existing prohibitions. As the statute itself explains, UIGEA created "[n]ew mechanisms for enforcing [existing] gambling laws on the Internet," because "traditional law enforcement mechanisms [were] often inadequate for enforcing gambling prohibitions." 31 U.S.C. § 5361(a)(4); *see id.* § 5365 (specifying civil remedies); *Iipay*, 898 F.3d at 960 ("In effect, the UIGEA prevents using the internet to circumvent existing state and federal gambling laws . . . ."). But whether the *mechanisms* established by UIGEA are available to ensure compliance with IGRA's prohibition does not affect the *prohibition itself*.

Put simply, UIGEA "does not change the legality of any gambling-related activity in the United States"—including under IGRA. H.R. Rep. No. 109-412, pt. 1, at 8.

The district court's contrary conclusion rested on a misapplication of this Court's decision in *Iipay*. *See* 1-ER-7-12. There, California and the federal government argued that UIGEA barred a tribe from offering an online bingo game from servers located on the tribe's lands to players located on non-tribal lands in California, where gambling was illegal. *Iipay*, 898 F.3d at 962-964. The tribe responded that IGRA authorized its conduct, but this Court disagreed, holding that IGRA was inapplicable because the wagers "d[id] not occur on Indian lands and [were] thus not subject to [the tribe's] jurisdiction under IGRA." *Id.* at 967. *Iipay* thus stands for the unremarkable proposition that, where IGRA does not apply, it cannot "shield [gaming activity] from the application of the UIGEA." *Id.*; *see id.* at 965-969.

Here, by contrast, Kalshi argues something markedly different: that sports wagers *prohibited* by IGRA are excused from that prohibition if they also do not violate UIGEA. But nothing in *Iipay* supports that conclusion—to the contrary, the *Iipay* Court recognized that "UIGEA

does not alter IGRA." *Id.* at 968. That observation follows from the text of UIGEA itself, which, again, makes clear that UIGEA does not "alter[], limit[], or extend[] *any* Federal . . . law . . . prohibiting, permitting, or regulating gambling within the United States." 31 U.S.C. § 5361(b) (emphasis added).

At bottom, "UIGEA prevents using the internet to circumvent existing . . . federal gambling laws." *Iipay*, 898 F.3d at 965. It thus cannot be the *means* of circumventing those laws, which is how Kalshi tries to use the statute.

B. The scope of UIGEA's exception for certain CEA-related transactions is immaterial.

Under 31 U.S.C. § 5362(1)(E)(ii), UIGEA does not reach "any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act." Because UIGEA does not supplant IGRA's prohibitions in the first place, *see supra*, at 21-24, this Court need not and should not decide the scope of this exception. Still, because Kalshi has fixated on this issue—and because the district court expounded upon it, *see* 1-ER-11-13—a brief elucidation of the context is warranted.

As noted, UIGEA prohibits the facilitation of payments associated

with "unlawful Internet gambling." 31 U.S.C. § 5363. But Congress wanted to make clear that this prohibition did not apply to payments made in connection with "bona fide business transactions such as securities trading or buying or selling insurance contracts." H.R. Rep. No. 109-412, pt. 1, at 10. So UIGEA carves out from the definition of "unlawful Internet gambling" any "transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act." 31 U.S.C. § 5362(1)(E)(ii).[10]

Kalshi maintains that its sports wagers fall within this exception because they are listed on a CFTC-registered contract market. *See* D. Ct. Doc. 44, at 7-8. But federal regulations expressly prohibit that listing. Under 17 C.F.R. § 40.11(a), "[a] registered entity shall not list for trading" any "contract" or "swap" that "involves, relates to, or references . . . gaming[] or an activity that is unlawful under any State or Federal

[10] Congress achieved this carveout by way of an intermediate definition. The statute defines "unlawful Internet gambling" as a "bet or wager" with certain characteristics. 31 U.S.C. § 5362(10)(A). The statute then excludes certain activities—including the CEA-related transactions described above—from the definition of a "bet or wager." *Id.* § 5362(1)(E).

law." In other words, sports wagers may not be listed on CFTC exchanges at all. Kalshi cites no precedent, anywhere, suggesting that a company can evade UIGEA enforcement by *impermissibly* listing sports wagers on a CFTC exchange. That is unsurprising: nobody ever tried such a maneuver until Kalshi did last year.

Again, the Court need not address Kalshi's argument on this score. How, if at all, UIGEA's exemption for CEA-related transactions applies in these unusual circumstances should be addressed only when a claim under that statute has been brought. *See Ctr. for Biological Diversity v. U.S. Forest Serv.*, 925 F.3d 1041, 1047 (9th Cir. 2019) (explaining that "[t]he rule against advisory opinions" is "the oldest and most consistent thread in the federal law of justiciability").

III. The CEA does not excuse Kalshi's IGRA violation.

Because UIGEA is not relevant to this case, Kalshi's only remaining argument is that the CEA shields it from liability under IGRA. According to Kalshi, sports wagers offered on its CFTC-registered contract market are "swaps" within the meaning of the CEA—and, as such, they fall within the CFTC's "exclusive jurisdiction" and are exempt from federal, state, or tribal gaming regulations. 7 U.S.C. § 2(a)(1); *see supra*, at

12-13. But that argument misreads isolated statutory phrases, ignores the surrounding sections of the CEA (and all other relevant provisions of the U.S. Code), and requires the Court to indulge an utterly implausible conclusion: that Congress silently legalized sports wagering—a long-regulated and oft-prohibited activity—when it passed Dodd-Frank in 2010. Properly construed, the CEA does not apply to Kalshi's offerings—and it certainly does not impliedly repeal IGRA's regulation of sports wagering on Indian lands.

A. Kalshi's interpretation conflicts with the text and structure of the CEA and related statutes.

Kalshi's arguments about the CEA turn on the meaning of the statutory term "swap," which the CEA defines, in relevant part, as a payment contract "that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). According to Kalshi, wagers on its platform satisfy both elements of that definition, because (1) they turn "on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency," and (2) the relevant event or contingency is "associated with a potential financial, economic or commercial consequence."

That argument stretches the statutory text past its breaking point. As a district court in this Circuit recently explained, Kalshi's sports contracts are not "associated with a potential financial, economic, or commercial consequences within the CEA's meaning." *Hendrick*, 2025 WL 3286282, at *9. Instead, that phrase more naturally connotes an "event or contingency [that] *itself* has some potential financial, economic, or commercial consequence without looking at externalities like potential downstream financial consequences such as parties extrinsic to the event betting on it." *Id.* at *6 (emphasis added; footnote omitted). As that same court explained, Kalshi's reading also fails because sports wagers do not turn on the "occurrence" or "nonoccurrence" of an event (*e.g.*, whether a sporting event takes place), but instead depend on the *result* of an event that has occurred. *Id.* at *6; *accord N. Am. Derivatives Exch., Inc. v. Nev. Gaming Control Bd.*, No. 2:25-cv-978, 2025 WL 2916151, at *7-9 (D. Nev. Oct. 14, 2025).

Kalshi's interpretation also creates serious surplusage problems. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001) (explaining the canon against surplusage). The CEA offers six alternative definitions of the term "swap." *See* 7 U.S.C. § 1a(47)(A). But "if everything a person

can conceive of happening is an event or contingency, and if every downstream economic consequence someone can conjure up makes that event or contingency associated with a potential financial, commercial, or economic consequence," then a single one of those alternative definitions—the one found in subsection (a)(ii)—"render[s] [the rest] superfluous." *Hendrick*, 2025 WL 3286282, at *9; *accord N. Am. Derivatives Exch*, 2025 WL 2916151, at *9.

A review of surrounding CEA provisions further undermines Kalshi's interpretation. *See, e.g.*, *Murphy v. Smith*, 583 U.S. 220, 226 (2018) (construing statutory language in light of "the larger statutory scheme surrounding the specific language" at issue). Kalshi contends that its sports wagers are a particular type of swap known as an "event contract." *See* D. Ct. Doc. 44, at 9-10. But the CEA authorizes the CFTC to bar the marketing of event contracts that involve "gaming" or "unlawful" activity—and the CFTC has done just that. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)-(ii); 17 C.F.R. § 40.11(a). In other words, both the statute and its implementing regulation treat gaming as a red flag—not an activity that Congress implicitly licensed.

The language of other statutes poses a problem for Kalshi's reading,

too. As discussed above, Congress knows well how to regulate gambling—including sports wagering. *See supra*, at 4-10. When it does so, it typically speaks in express terms. The Wire Act, for example, uses phrases like "bets or wagers on a sporting event or contest." *See* 18 U.S.C. § 1084. But that kind of language is notably absent from the CEA and Dodd-Frank. That absence is telling: Congress does not hide the ball when it seeks to regulate gambling.

B. The necessary implications of Kalshi's interpretation further undermine its interpretation.

In addition to the textual problems with its interpretation, Kalshi's insistence that sports wagers are "swaps" also leads to two untenable conclusions.

First, it requires the Court to believe that Congress *silently* legalized sports gambling when it passed Dodd-Frank in 2010. As discussed above, there is absolutely no indication that members of Congress or the public in 2010 thought that amending the definition of "swap" would open the door to sports betting nationwide. *See supra*, at 13-14. Instead, the contemporaneous record shows that Congress added swaps to the CEA to ensure that such transactions were transparent and subject to

oversight—as they notoriously were not in the lead up to the 2008 financial crisis. *See* Dodd-Frank Background, *supra* note 2, at 1, 23-24. If Congress had legalized sports betting in 2010, it would not have escaped notice until 2025. After all, the "legalization of sports gambling is a controversial subject." *Murphy*, 584 U.S. at 486.

Second, adopting Kalshi's theory would mean that *all* sports wagering must take place on a CFTC-regulated exchange. *See, e.g.*, *Hendrick*, 2025 WL 3286282, at *8-9. Under the CEA, it is generally "unlawful for any person . . . to enter into a swap unless the swap is entered into on, or subject to the rules of" a CFTC-registered market. 7 U.S.C. § 2(e). Accordingly, Kalshi's position, if adopted, would channel all sports wagers into those markets—and thereby transform the CFTC into the nation's gaming regulator.

The Commission itself has noted the folly of that outcome. "[I]n the United States," the Commission has explained, "gambling is overseen by state regulators with particular expertise, and governed by state gaming laws aimed at addressing particular risks and concerns associated with gambling. The Commission is not a gaming regulator." *Event Contracts*, 89 Fed. Reg. 48,968, 48,982-48,983 (proposed June 10, 2024)

(footnote omitted). Indeed, the CFTC "does not believe that it has the statutory mandate nor specialized experience appropriate to oversee [gambling], or that Congress intended for the Commission to exercise its jurisdiction . . . in this manner." *Id.*[11]

Put simply, a reading of the CEA that produces these results has little to recommend it.

C. The clear-statement rule and presumption against implied repeal foreclose Kalshi's interpretation.

While text and context clearly refute Kalshi's interpretation, two well-established presumptions put the question beyond doubt.

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[11] Evidently recognizing the implausibility of a reading that would turn the CFTC into a national gaming commission, Kalshi has suggested elsewhere that *its* sports wagers may be traded on a CFTC-registered exchange, but other such wagers need not be. *See* Kalshi Mem. of Law at 24-25, *Commonwealth v. KalshiEX, LLC*, No. 2584CV02525-BLS1 (Mass. Super. Nov. 18, 2025) (Doc. 41). To draw this distinction, Kalshi relies on a 2012 rule that notes that "many types of consumer and commercial arrangements that historically have not been considered swaps" are not within the Dodd-Frank Act's definition of swaps. *Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement,"* 77 Fed. Reg. 48,208, 48,246-48,247 (Aug. 13, 2012). This rule, Kalshi suggests, shows that sports wagers, which have not historically been considered swaps, need not be traded on a CFTC-registered exchange in all cases. But even a cursory inspection of Kalshi's attempted distinction reveals that it undercuts Kalshi's theory entirely, as it confirms that sports wagers *are not swaps*.

First, Kalshi's reading flouts the clear-statement rule. The Supreme Court has instructed that where a proposed reading of federal law would "significantly alter the balance between federal and state power," only "exceedingly clear language" to that effect will suffice. *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021). This clear-statement rule is rooted in "essential principles of federalism," which "require[] that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of this Nation." *Alden v. Maine*, 527 U.S. 706, 748 (1999).

The clear-statement rule controls here. Sports gaming historically has been—and remains—governed by the states; a fact expressly incorporated in multiple federal statutes. *See supra*, at 3-11. Congress has not silently reworked that established balance, and it certainly did not do so in a statute that never mentions sports wagering. *See Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001) ("[Congress] does not, one might say, hide elephants in mouseholes."). Indeed, the clear-statement rule is perhaps especially potent in this case, because Kalshi's legal theory would transgress power held by a third sovereign (the Plaintiff

Tribes) in an area where Congress expressly has recognized that authority. *See* 25 U.S.C. § 2701(5).

Second, Kalshi's interpretation violates the presumption against repeals by implication. Under settled precedent, the CEA cannot be read to repeal any part of IGRA "unless the intention of the legislature to repeal is clear and manifest." *Shoshone-Bannock Tribes v. U.S. Dep't of Interior*, 153 F.4th 748, 759 (9th Cir. 2025) (brackets and quotation marks omitted); *see Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) ("Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute." (quotation marks omitted)). No such "clear and manifest" intent can be drawn from the 2010 Dodd-Frank Act; again, that act did not address the sports wagering or Indian gaming. Had it done so, the text of the bill—not to mention the legislative record and public response—would have looked quite different. *See Martin*, 793 F. Supp. 3d at 683.

The CEA, even as amended by Dodd-Frank, is the statute that addresses financial instruments that "manag[e] and assum[e] price risks, discover[] prices, or disseminat[e] pricing information through trading." 7 U.S.C. § 5(a). IGRA is the statute that governs gaming on Indian

lands. 25 U.S.C. § 2701. Rather than accept Kalshi's argument that Congress impliedly repealed or preempted numerous federal and state laws, the Court need only apply the established "interpretive principle that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum where there is no clear intention otherwise." *Shoshone-Bannock*, 153 F.4th at 761 (brackets, ellipses, and quotation marks omitted).

CONCLUSION

The Court should reverse the district court's order.

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Respectfully submitted.

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