IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CASE No. 22-5010

MONTERRA MF, LLC, *et al.*,
Appellees,

vs.

DEBRA HAALAND, in her official capacity as SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR, *et al.*,

Appellants.

On Appeal from the United States District Court for the District of Columbia
Case No. 1:21-cv-02513-DLF

APPELLEES' RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE AND OPPOSITION TO THE GOVERNMENT'S MOTION FOR VOLUNTARY DISMISSAL

Appellees Monterra MF, LLC, Armando Codina, James Carr, Norman Braman, 2020 Biscayne Boulevard LLC, 2060 Biscayne Boulevard LLC, 2060 NE 2nd Avenue, LLC, 246 NE 20th Terrace LLC and No Casinos (the "Monterra Appellees") submit this response to the order to show cause regarding appellate jurisdiction. Because the district court resolved the entire action and disassociated itself from the case, this Court should conclude that appellate jurisdiction is proper under 28 U.S.C. § 1291 and discharge the order to show cause.

BACKGROUND

After extensive briefing in two separate cases challenging unlawful agency action, the district court concluded in both cases that the Secretary of the United States Department of the Interior ("DOI") exceeded her authority when she approved a 2021 gambling compact (the "Compact") between the State of Florida and the Seminole Tribe of Florida (the "Seminole Tribe"). The Compact purported to authorize the greatest expansion of illegal gambling in Florida's history, giving the Seminole Tribe exclusive rights to conduct a host of Vegas-style games not lawfully authorized in Florida. The relief ordered by the district court—setting aside the unlawful Compact approval—was the precise relief the Monterra Appellees had requested and favorably resolved the claims brought by the Monterra Appellees.

The Monterra Appellees are Florida-based businesses, property owners, and a non-profit organization who oppose the unlawful expansion of gambling in Florida. They sued DOI and the Secretary to challenge the government's default approval of the Compact and to prevent the sweeping expansion of the gambling purportedly authorized by the Compact. Another group of plaintiffs, West Flagler Associates and Bonita-Fort Myers Corp. (collectively, the "West Flagler Gambling Entities") had separately filed a case seeking to vacate the Secretary's erroneous approval, but with starkly different interests. In contrast to the Monterra Appellees, the West Flagler Gambling Entities are gambling enterprises that sought relief

because the Compact prevented them from maximizing their economic interests in fully participating in statewide, Internet sports betting. The *Monterra* and *West Flagler* cases proceeded concurrently but were not formally consolidated. The Monterra Appellees and the West Flagler Gambling Entities both advocate vacatur of the Compact, but their approaches and underlying reasons for doing so are diametrically opposed.

The district court resolved the *Monterra* and *West Flagler* cases simultaneously in a single memorandum opinion, entered in both dockets, and correctly held that the Compact violated IGRA and "the appropriate remedy is to set aside the Secretary's default approval of the Compact." DE 55 at 23-24.[1] The district court further ruled that the Monterra Appellees' "request for summary judgment . . . is dismissed as moot" because "vacating the Compact fully redresses [their] injuries." DE 55 at 24. DOI and the Secretary had sought to dismiss both the *Monterra* lawsuit and the *West Flagler* lawsuit, and the district court expressly ruled "the Secretary's Motions to Dismiss are denied." DE 55 at 25. The district court also denied the Seminole Tribe's Motion for Limited Intervention. DE 54.[2] Both the *West*

[1] References to "DE ___" are to the docket entries in the district court case, *Monterra MF, LLC et al. v. Haaland et al.*, No. 1:21-cv-2513 (D.D.C.).

[2] The Seminole Tribe had sought intervention in both *West Flagler* and *Monterra*, but only appealed the denial of its motion in *West Flagler*. *See West Flagler et al., v. Haaland and The Seminole Tribe of Florida*, Case No. 22-5265 (D.C. Cir.). This Circuit granted the Monterra Appellees' request to participate in that appeal as *amici*

Flagler and *Monterra* dockets reflect that the cases were closed and terminated on November 22, 2021—the date the district court ruled.

The government timely appealed in both *West Flagler* and *Monterra* on January 19, 2022, and then moved to consolidate the *Monterra* appeal with two pending appeals from the *West Flagler* case (Case Nos. 21-5265 and 22-5022), which involve the very same decision at issue here.[3] On March 10, 2022, this Court deferred ruling on the motion to consolidate and asked the parties to address appellate jurisdiction, including "whether the district court's November 22, 2021 order in No. 21-cv-02513 should be construed as dismissing plaintiffs-appellees' claims, and if the order is not so construed, whether it is a final, appealable order."

As discussed here, there are no jurisdictional barriers to this appeal. The district court expressly predicated its dismissal of the claims in *Monterra* on the remedy set forth in the memorandum opinion entered in both *Monterra* and *West Flagler*. As the district court ruled, the remedy vacating the entire Compact "fully redress[ed] the injuries" alleged in *Monterra*. DE 55 at 24. Accordingly, to the

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curiae at the merits stage. *See id.*, Doc. No. 1925401 (D.C. Cir. Dec. 3, 2021). This Circuit also *sua sponte* consolidated the Seminole Tribe's appeal in *West Flagler* with the government's appeal in *West Flagler*.

[3] The Monterra Appellees support consolidating this appeal with those two cases because the legal and factual issues overlap. The government recently moved to withdraw its motion to consolidate the appeals, and the Monterra Appellees oppose that request for the reasons stated in this jurisdictional response.

disappointment of the West Flagler Gambling Entities, this appeal is inextricably intertwined with the related, consolidated appeals arising from the *West Flagler* action. The district court aptly described the connection between the two cases, noting that it would "resolve[] these cases together because they challenge the same gaming compact, raise overlapping questions of law, and seek overlapping forms of relief." DE 55 at 2 n.1. Any appellate decision that could potentially alter the remedy ordered by the district court necessarily affects the Monterra Appellees and the government.[4] Proceeding with the combined appeals in *West Flagler*, to the exclusion of the appeal in *Monterra*, would be unjust and improper, particularly where the Seminole Tribe's motion to intervene was adjudicated in both matters and the remedy ordered by the district court is applicable in both matters.

A fundamental premise of Florida gaming law is that all gambling is illegal unless made legal, and a citizen's initiative is the exclusive, constitutionally required mechanism for approving casino gambling expansion. *See* Fla. Stat. § 849.08; Fla.

[4] The West Flagler Gambling Entities have already telegraphed their interest in altering the remedy awarded by the district court. In their opposition to the Seminole Tribe's Emergency Motion for Stay Pending Appeal in the *West Flagler* case, they noted that their "sole interest is in the unlawful online sports gaming provisions of the Compact" and they "would not oppose a partial stay leaving the IGRA approval of all other provisions of the Compact intact pending this appeal, if the Court believes it has the power to grant it." Case No. 21-5265, Doc. No. 1924564 at 11 n.10 (D.C. Cir. filed Nov. 30, 2021). The district court affirmatively rejected such a "partial" remedy as inconsistent with this Circuit's precedent. *See* DE 55 at 24 n.8. And this Court rejected the Seminole Tribe's request for a stay.

Const. Art. X, § 30. The Monterra Appellees advance this important, independent basis for affirming the district court's decision to vacate the Compact. As the only true opponents of unlawful expansion of gambling in Florida, only the Monterra Appellees would ensure that Floridians' constitutional rights are respected.[5]

ARGUMENT

This Court has appellate jurisdiction over "all final decisions of the district courts of the United States . . . ." 28 U.S.C. § 1291. As this Court has held, finality "is to be given a practical rather than a technical construction" and is characterized by a ruling "that terminate[s] an action." *Limnia, Inc. v. U.S. Dep't of Energy*, 857 F.3d 379, 385 (D.C. Cir. 2017). This Court has also concluded that finality "depends on whether the entire case has been decided." *United States v. Clark*, 977 F.3d 1283, 1288 (D.C. Cir. 2020) (holding that the existence of an unresolved claim precluded appellate jurisdiction).

The district court entered a final decision in *Monterra* that resolved the entire action, leaving no pending claims and nothing further for the district court to decide.

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[5] The district court stated that it was not issuing a final decision on any question of Florida constitutional law, DE 55 at 23, but nevertheless erroneously suggested in *dicta* that the State and the Seminole Tribe could engage in online gaming "solely on Indians lands." DE 55 at 25. As the Monterra Appellees articulated in their briefing in the district court, such a conclusion is contrary to law because IGRA does not permit Tribes and States to circumvent state law. DE 37-4 at 23-29. The district court's *dicta* underscores the importance of the Monterra Appellees' participation in the appeals regarding vacatur of the Compact.

In fact, the district court specifically noted that the remedy "resolves the *Monterra* action" and "fully redresses the injuries that [the Monterra] plaintiffs allege" and therefore directed the clerk to close the case. DE 55 at 24. Because the district court terminated the entire action, this Court should conclude that the order was final and appealable, and therefore this Court has jurisdiction to review the district court's decision.

A. The District Court Resolved the Entire Dispute

To satisfy itself of its jurisdiction to resolve this appeal, this Court issued an order to show cause regarding the disposition of this case. Citing *Capitol Sprinkler Inspection, Inc. v. Guest Services, Inc.*, 630 F.3d 217 (D.C. Cir. 2011), this Court asked whether the district court's order "should be construed as dismissing plaintiffs-appellees' claims," and if not, whether the order is final and appealable. As noted in *Capitol Sprinkler*, finality turns on whether the "core dispute" was left "unresolved for further proceedings." *Limnia*, 857 F.3d at 385 (quoting *Am. Hawaii Cruises v. Skinner*, 893 F.2d 1400, 1403 (D.C. Cir. 1990)).

In *Monterra*, as well as in *West Flagler*, the core dispute for resolution was whether the Secretary properly approved the Compact between Florida and the Seminole Tribe. *See* DE 55 at 1. The district court definitively resolved that dispute by concluding in both cases that the Compact approval was unlawful and should be vacated. DE 55 at 18-23. Accordingly, the district court granted summary judgment

to the West Flagler Gambling Entities in the *West Flagler* case. Given that decision, the district court dismissed the *Monterra* claims as "moot" because vacating the Compact "resolves the *Monterra* action . . . and fully redresses the injuries that those plaintiffs allege." DE 55 at 24; *see also* DE 54.

This case is unlike *Capitol Sprinkler*, where a notice of appeal was filed prematurely before the district court had resolved all claims. *See Capitol Sprinkler*, 630 F.3d at 221. The appellant in *Capitol Sprinkler* had appealed the grant of summary judgment on its third party claims *before* the district court had disposed of the remaining claims. *Capitol Sprinkler*, 630 F.3d at 221. Here, the notice of appeal was filed *after* the district court's decision resolving all pending claims, and therefore was not premature. The district court's memorandum opinion made clear that, given the disposition of the case, the *Monterra* claims were no longer pending. *See* DE 55 at 24. It specified that the Monterra Appellees' "request for summary judgment on other grounds is dismissed as moot." DE 54 at 24.

The district court order, entered on the same date as the memorandum opinion, denied various pending motions, including the government's motion to dismiss and the Seminole Tribe's request to intervene, and directed the Clerk of Court to close the case. DE 54. The order left nothing further for the district court to do. When a district court has "thoroughly disengaged itself" from a case and nothing remains for further adjudication, then the procedural posture is "unlike the circumstances

addressed in Rule 54(b) of the Federal Rules of Civil Procedure" and this Court has jurisdiction to review. *Reuber v. United States*, 773 F.2d 1367, 1368 (D.C. Cir. 1985); *see also* Wright & Miller, *Federal Practice & Procedure*, § 3914.6 ("Orders granting dismissal of all claims among all parties ordinarily are final.").

The district court's memorandum opinion and subsequent order contain other indicia of finality. After concluding that the government violated the Administrative Procedure Act, the district court determined the appropriate relief and directed the clerk to close the case. Cases that leave the "quantum of relief" as "to be determined" have been deemed the "classic example of non-finality and non-appealability." *Franklin v. District of Columbia*, 163 F.3d 625, 629 (D.C. Cir. 1998). But that is not the case here, where the district court fashioned a remedy that, in its own words, "resolve[d]" the entire case.

B. The District Court's Denial of the Government's Motion to Dismiss is Reviewable.

As DOI and the Secretary have acknowledged, one issue in this appeal is whether the district court erred in denying their motion to dismiss. *See* Statement of Issues on Appeal, Case No. 22-5010, Doc. No. 1936072 (D.C. Cir. filed Feb. 22, 2022). In the district court, the government sought dismissal on many grounds, including failure to state a claim and lack of standing. *See* DE 35. Despite bringing this appeal, the government has suggested that the district court's denial of its motion to dismiss is not an appealable final order. *See* DE 58-1 at 6; *see also* Motion for

Abeyance, Case No. 22-5010, Doc. No. 1940141 (D.C. Cir. filed Mar. 22, 2022) (subsequently withdrawn). That may have been true had the district court not finally resolved all pending claims.[6] But because the district court's remedy resolved the *Monterra* claims, the ruling denying the government's motion to dismiss and dismissing the entire action is reviewable. *See Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 668 (D.C. Cir. 2004) (finding appellate jurisdiction where the court dismissed the action and not merely the complaint). Indeed, the Eighth Circuit concluded that an order dismissing a case as moot, as the district court did in *Monterra*, and an order denying vacatur of a 12(b)(6) ruling were final and reviewable on appeal. *Reid v. BCBSM, Inc.*, 787 F.3d 892, 894 (8th Cir. 2015).

C. This Court Has Article III Jurisdiction.

Although this Court has not raised concerns about any party's standing, the Monterra Appellees recognize this Court's independent obligation to satisfy itself of all aspects of jurisdiction. *See Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir.

[6] In the district court, the government cited *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 296 (D.C. Cir. 2006), and *Bombardier Corp. v. Nat'l R.R. Passenger Corp.*, 333 F.3d 250, 253 (D.C. Cir. 2003), for the proposition that denial of a motion is not final for purposes of appeal. DE 58-1 at 6. Yet both of those cases involved situations where the court had not made a final disposition of the claims. *See England*, 454 F.3d at 296 (reviewing only the denial of preliminary injunctive relief); *Bombardier Corp.*, 333 F.3d at 253 (finding no jurisdiction to review denial of a motion to dismiss in an ongoing case). That is not the case here, where the district court dismissed the *Monterra* claims because the relief imposed by the court "fully redresses the injuries that those plaintiffs allege." DE 55 at 24.

2002). Standing "involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise." *Animal Legal Defense Fund, Inc. v. Glickman*, 154 F.3d 426, 431 (D.C. Cir. 1998) (quoting *Bennett v. Spear*, 520 U.S. 1154, 1161 (1997)). The district court made findings and conclusions on the issue of standing, although not specific to the Monterra Appellees. *See* DE 55 at 8-12. The district court correctly concluded that Article III was satisfied because at least one party had standing (West Flagler), which was sufficient to confer jurisdiction. DE 55 at 12. Where multiple parties seek the same relief, as did West Flagler Gambling Entities and the Monterra Appellees, standing is satisfied once the court confirms that at least one party has standing. *See Hardaway v. District of Columbia Housing Auth.*, 843 F.3d 973, 979 (D.C. Cir. 2016); *see also Rumsfeld v. Forum for Acad. and Inst. Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006); *General Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 402 n. 22 (noting that standing need not be addressed when a party has obtained the same relief as a separate plaintiff that has been found to have standing).[7]

[7] The Monterra Appellees do not seek direct appellate review of agency action, and therefore need not establish standing at the outset of this appeal, as generally required by this Court's precedent. *See Sierra Club*, 292 F.3d at 901. The Monterra Appellees submitted evidence in the district court to establish their independent standing. *See, e.g.*, DE 37-5 37-6, 37-7, 37-9. Six of the seven Monterra Appellees own property near sites where gambling would have occurred if the Compact had been allowed to stand, and that is sufficient to establish standing to challenge government approval of a compact. *See Amador Cnty. v. Salazar*, 640 F.3d 373, 378-

Independently, the West Flagler Gambling Entities incorrectly asserted that the government may lack standing to appeal the disposition in *Monterra*. The government then filed a jurisdictional response stating its belief that it lacks standing to appeal because the order below is not "adverse" to them. *See* Response to Show-Cause Order and Motion for Voluntary Dismissal, No. 22-5010, Doc. No. 194252 (D.C. Cir. filed Apr. 8, 2022). The government cites no case law and relies solely on a recent district court minute order on a Motion for Indicative Ruling. *See* DE 58. Although the district court asserted "there is no judgment adverse to the defendants," "[w]hen appellate jurisdiction is at stake, what matters is the appellate court's assessment of finality, not the district court's or the clerk's." *Franklin*, 163 F.3d at 630. Appellate courts have expressly determined that standing to appeal exists where a defendant "was aggrieved in a practical sense" by failure to obtain a dismissal with prejudice, for example. *LaBuhn v. Bulkmatic Transport Co.*, 865 F.2d 119, 121-22 (7th Cir. 1988); s*ee also Custer v. Sweeney*, 89 F.3d 1156, 1164 (4th Cir. 1996) (noting that "the party 'aggrieved' concept" should be given a "practical rather than hypertechnical meaning").

The district court previously noted in its memorandum opinion, "the *West Flagler* and *Monterra* suits . . . seek the same relief—principally the vacatur of the

79 (D.C. Cir. 2011). The Monterra Appellees' standing is self-evident and can be further addressed during merits briefing, if necessary.

Secretary's default approval," and the court ultimately granted that relief. DE 55 at 12. As discussed in Section D below, the district court order had the practical effect of granting the same relief to both the Monterra Appellees and the West Flagler Gambling Entities—at the expense of the government and because of unlawful government action. As a result of the district court decision, entered simultaneously in *Monterra* and *West Flagler*, the government's default approval of the Compact was vacated.

As this Circuit has explained, analysis of standing to appeal should not "exalt[] form over substance." *Natural Resources Defense Council v. Pena*, 147 F.43d 1012, 1018 (D.C. Cir. 1998). Here, the impact of the final decision in *Monterra* is interdependent with the outcome of the appeals in *West Flagler*. Where the government's standing to appeal may turn on the merits of that case, consolidation of this appeal with the pending appeals in *West Flagler* is necessary. *See Shell Oil Co. v. Federal Energy Regulation Commission*, 47 F.3d 1186, 1195 (D.C. Cir. 1995) (noting that consolidation was "reasonable and appropriate" because two cases were "legally interdependent" and one appellant's standing may turn on the merits of the other appeal).[8]

[8] There is also an open question as to whether the government's standing to appeal implicates Article III jurisdictional concerns or simply prudential limits on the exercise of jurisdiction. *See United States v. Windsor*, 570 U.S. 744, 756-57 (2013); *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 333-34 (1980). As the Supreme Court has held, the United States can "retain[] a stake sufficient to support

D. The District Court Decision Had the Practical Effect of Granting Relief in the Monterra Appellees' Favor.

To determine whether it has jurisdiction, this Court considers "the practical effect of the order at the time it was entered." *Limnia*, 857 F.3d at 385. Here, the district court fashioned the precise relief that the Monterra Appellees had requested. Although the district court dismissed the *Monterra* claims as "moot," it characterized the action as "resolve[d]" because the injuries alleged were "fully redressed." DE 55 at 24.

Vacatur of the Compact was the linchpin for the court's dismissal. Indeed, the government acknowledges that the district court's orders could be construed as granting relief on the "shared claim" also at issue in the government's appeal in the *West Flagler* case, and expressly requested review on that issue. *See* Statement of Issues on Appeal, Case No. 22-5010, Doc. No. 1936072 at 3 (D.C. Cir.) ("To the extent the court's orders in *Monterra* are construed as granting any relief on that shared claim, the federal government challenges that decision in this appeal as well."). By setting aside the Secretary's approval of the Compact and vacating the Compact in its entirety, the district court remedied the injuries alleged by both the

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Article III jurisdiction," even if it technically "prevailed" in a limited sense and "seeks no redress." *Windsor*, 570 U.S. at 756. Here, the government suffered a concrete injury when the district court decided to vacate its approval of the Compact. That relief is applicable in both *Monterra* and *West Flagler*, and provides sufficient stake to support standing to appeal. Accordingly, the government presents no reasonable basis to dismiss this appeal at this juncture.

Monterra Appellees and the West Flagler Gambling Entities. The Monterra Appellees are entitled to independently defend the district court's decision.

E. This Court Should Deny the Government's Request to Voluntarily Dismiss this Appeal.

This Court has discretion to deny a motion for voluntary dismissal, and should deny that request here.

Federal Rule of Appellate Procedure 42(b) provides: "An appeal *may* be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court." Circuit courts have denied dismissal motions in the interest of justice or fairness. *See, e.g., Township of Benton v. Cnty. of Berrien*, 570 F.2d 114, 118-19 (6th Cir. 1978); *Local 53, Int'l Ass'n of Heath and Frost Insulators v. Vogler*, 407 F.2d 1047, 1055 (5th Cir. 1969).

Here, the government seeks to proceed to the merits of its appeal in *West Flagler*, to the exclusion of the Monterra Appellees, even though the district court resolved *West Flagler* and *Monterra* simultaneously with the exact same relief. The consolidated appeals in *West Flagler* will also address the district court's denial of the Seminole Tribe's motion for limited intervention. Yet, the Seminole Tribe did not seek review of the order denying their motion and granting relief in *Monterra*. The Monterra Appellees would be prejudiced if this Court considers arguments in support of reversing the relief obtained concurrently in *Monterra*, without the participation of the Monterra Appellees in the appeals, including at any oral

argument. As the court concluded in *Township of Benton*, the Monterra Appellees should remain as parties in the consolidated appeals, particularly because the government offers unsupported arguments for dismissal. *See Township of Benton*, 570 F.2d at 119 ("[W]e feel the better practice on the facts of this case is to keep the [additional appellant] in this appeal formally as well as practically.").

CONCLUSION

For the above reasons, this Court should deny the government's request for voluntary dismissal of this appeal, discharge the order to show cause, proceed to the merits, and consolidate this appeal with Case Nos. 21-5265 and 22-5022 to promote judicial efficiency.

Dated: April 11, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

I HEREBY CERTIFY that this document complies with the word limit of Fed. R. App. P. 27(d)(2) because this document contains 4,178 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document was prepared using Word in Times-New Roman 14-point font.

/s/ *Jenea M. Reed*
Jenea M. Reed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 11, 2022, the foregoing document was filed with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit using the Court's CM/ECF system, and service was effected electronically to all counsel of record.

/s/ *Jenea M. Reed*
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