UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, et al. Plaintiffs, v. STEVEN MNUCHIN, SECRETARY, UNITED STATES DEPARTMENT OF THE TREASURY Defendant.	Case No. 1:20-cv-01002-APM
CHEYENNE RIVER SIOUX TRIBE, et al. Plaintiffs, v. STEVEN MNUCHIN, SECRETARY, UNITED STATES DEPARTMENT OF THE TREASURY Defendant.	Case No. 1:20-cv-01059-APM
UTE TRIBE OF THE UINTAH AND OURAY RESERVATION Plaintiff, v. STEVEN MNUCHIN, SECRETARY, UNITED STATES DEPARTMENT OF THE TREASURY Defendant.	Case No. 1:20-cv-01070-APM

CONFEDERATED TRIBES PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES

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MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs Confederated Tribes of the Chehalis Reservation, Tulalip Tribes, Houlton Band of Maliseet Indians, Akiak Native Community, Asa'carsarmiut Tribe, Aleut Community of St. Paul Island, Navajo Nation, Quinault Indian Nation, Pueblo of Picuris, Elk Valley Rancheria, California, and San Carlos Apache Tribe (collectively, "Confederated Tribes Plaintiffs") hereby move for summary judgment on their claim that the decision by Defendant Steven Mnuchin, Secretary of the United States Department of the Treasury (the "Secretary"), that Alaska Native regional corporations and Alaska Native village corporations (collectively, "ANCs") are "Tribal governments" for purposes of Title V of the CARES Act, 42 U.S.C. § 801, is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In issuing its preliminary injunction in this matter, this Court rendered an initial determination that the Secretary acted contrary to law in deeming ANCs eligible for public health emergency funding under Title V of the CARES Act, when Congress provided that such funds could be disbursed only to Tribal governments. Congress defined a Tribal government as "the recognized governing body of an Indian Tribe," and this Court found that the Plaintiff Tribes had established a likelihood of success on the merits that ANCs are neither Indian tribes nor recognized governing bodies of the same. In doing so, it hewed to the plain language of the statute and accepted principles of statutory construction.

Since this Court issued its decision, the United States has produced the Administrative

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Record underpinning the Secretary's decision to disburse governmental funds to ANCs. That record reveals that the decision was based on a single, two-page letter from the Solicitor of the Department of the Interior. In deeming it "unquestionable" that ANCs are Indian tribes, the Solicitor's letter does not mention, let alone grapple with, the eligibility clause that Congress used to cabin the definition of an Indian tribe to federally recognized tribes and that this Court found central to its decision. And in suggesting that the "recognized governing body" element of Congress's definition can effectively be "override[n]" by his truncated analysis of what it means to be an Indian tribe, the Solicitor ignored the twin facts that (1) "recognized governing body" is a term of art that is well understood to reference those tribal governmental bodies with which the United States maintains a government-to-government relationship (an understanding indeed enunciated by the Department of the Interior in duly promulgated regulations) and (2) congressional text, especially text with a well-established meaning, cannot be discarded as inconvenient surplusage.

The language of Title V deserves the respect accorded it by this Court rather than the cavalier treatment given it by the Solicitor and relied upon by the Secretary. The Confederated Tribes Plaintiffs request that this Court confirm on summary judgment what it properly suggested in issuing its preliminary injunction: ANCs are not "Tribal governments" because they are neither "Indian Tribes" nor their "recognized governing bodies." The Tribes further request that this Court direct the Secretary on remand to promptly disburse all remaining Title V funds to their intended recipients—the governing bodies of federally recognized Indian tribes who desperately need the monies to continue with their efforts to safeguard the public health of their citizens at this time of unprecedented crisis.

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II. STATEMENT OF FACTS

A. The COVID-19 Pandemic and the Tribal Governmental Response

COVID-19 is causing devastating harm and requiring an unprecedented governmental response throughout Indian country. Plaintiffs comprise a diverse group of federally recognized Indian Tribes located within the exterior boundaries of Alaska, Arizona, California, Maine, New Mexico, South Dakota, Utah, and Washington. From the populous Navajo Nation, which has the highest per capita infection rate of any sovereign in the United States (having surpassed both New York and New Jersey),[1] to the small Alaska Native villages, which are fighting to stop history from repeating itself,[2] Plaintiffs are united in the governmental disruption they have suffered as a result of the pandemic and in their efforts to protect their citizens and safeguard public health in their communities.

Each Plaintiff's Tribal government has declared a State of Emergency, issued a Stay at Home order, or both. *E.g.*, ECF Nos. 3-3 ¶ 6, 3-2 ¶ 6, 3-1 ¶ 2, 3-6 ¶ 30, 3-4 ¶ 20, 3-5 ¶ 5. Each

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[1] Alexandra Sternlicht, *Navajo Nation Has Most Coronavirus Infections Per Capita In U.S., Beating New York, New Jersey*, FORBES (May 19, 2020), https://www.forbes.com/sites/alexandrasternlicht/2020/05/19/navajo-nation-has-most-coronavirus-infections-per-capita-in-us-beating-new-york-new-jersey/#5a105cf98b10 (last visited May 28, 2020).

[2] Alaska Div. of Public Health, *1918 Pandemic Influenza Mortality in Alaska* 4 (2018), http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/AK_1918Flu_DataBrief_092018.pdf (last visited May 28, 2020) (Alaska Natives accounted for 82% of deaths from Spanish flu in Alaska in 1918-1919); U.S. Nat'l Library of Medicine, *1918-19: 'Spanish Influenza' Claims Millions of Lives*, Nat'l Inst. of Health, https://www.nlm.nih.gov/nativevoices/timeline/420.html (last visited May 28, 2020) (72 of 80 residents of an Alaska Native village died from Spanish flu); Tony Hopfinger, *How the Alaska Eskimo Village Wales Was Never the Same After 1918 Flu*, Anchorage Daily News (May 27, 2012), https://www.adn.com/rural-alaska/article/part-3-how-alaska-eskimo-village-wales-was-never-same-after-1918-flu/2012/05/27 (last visited May 28, 2020).

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has taken extraordinary emergency actions to stem the spread of the virus, to maintain existing essential governmental services, to develop and deploy COVID-19 response measures, and to help its citizens avoid financial ruin. These are not private, charitable actions, but efforts by sovereign governments honoring a sacred social contract with their citizens.

For example, Plaintiffs have transformed health facilities into acute health care centers to treat COVID-19 cases, ECF Nos. 3-5 ¶ 8, 3-6 ¶ 38; procured new medical equipment and supplies, including an ambulance and personal protective equipment (PPE), ECF Nos. 3-6 ¶ 39, 3-4 ¶ 28, 3-5 ¶ 9; provided emergency water and sewer service, ECF No. 3-1 ¶ 4; instituted heightened cleaning and sanitation supplies and service, ECF Nos. 3-4 ¶ 28, 3-1 ¶ 4, 3-6 ¶ 28; hired additional first responders and other staff, ECF No. 3-3 ¶¶ 8, 12; provided emergency relief funds to tribal members, ECF Nos. 3-5 ¶ 6, 3-6 ¶ 22; and delivered meals to elders and school children and opened or expanded food banks, ECF Nos. 3-4 ¶ 28, 3-1 ¶ 4, 3-5 ¶ 9. They have done all this while struggling to maintain the everyday essential services that governments provide, including public safety and policing, health care, garbage and sanitation services, and food assistance. *E.g.*, ECF Nos. 3-4 ¶¶ 16, 22, 3-3 ¶ 7, 3-5 ¶ 8.

At the same time as Plaintiffs have undertaken a massive expansion in governmental programs and services, their economies have collapsed. *E.g.*, ECF Nos. 3-4 ¶¶ 21-30, 3-6 ¶¶ 44-58, 3-1 ¶¶ 2, 5. The severe impacts on their budgets notwithstanding, they have sought to mitigate the financial consequences for their employees, providing paid leave, ECF Nos. 3-6 ¶¶ 26, 29, 3-5 ¶ 7, 3-4 ¶ 24; paying health care premiums, ECF No. 3-6 ¶ 29; and paying overtime to essential employees and emergency workers, ECF Nos. 3-6 ¶ 56, 3-5 ¶ 5. The Tribes have

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redirected nearly all of their governmental resources—financial and otherwise—to COVID-19 related efforts, and they desperately need funds to continue those efforts. *E.g.*, ECF No. 3-2 ¶ 5.

B. The CARES Act and the Secretary's Decision to Disburse Funds Mandated for Tribal Governments to For-Profit, State-Chartered Corporations

Congress enacted Title V of the CARES Act, "Coronavirus Relief Fund," 42 U.S.C. § 801, which the President signed into law on March 27, 2020, to help Plaintiffs and other federally recognized Tribal governments, along with State and local governments, meet the grave challenges posed by the pandemic. Title V appropriates $150 billion "for making payments to States, Tribal governments, and units of local government," including $8 billion earmarked exclusively for Tribal governments. 42 U.S.C. § 801(a)(1), (a)(2)(B). These governments must use relief funds "to cover only those costs" that (1) "are necessary expenditures incurred due to the public health emergency with respect to" COVID 19; (2) "were not accounted for in the budget most recently approved . . . for the State or government"; and (3) were incurred from March 1, 2020, to December 30, 2020. 42 U.S.C. § 801(d).

On March 31, 2020, the Department of the Interior notified Tribal leaders that, together with the Department of the Treasury, it would hold two telephonic consultations with Indian tribes regarding the allocation of the $8 billion appropriated by Congress for Tribal governments under Title V. AR001. During the first consultation, on April 2, 2020, Daniel Kowalski, Counselor to the Secretary of the Treasury, stated that "[w]e take seriously the directive to ensure that all amounts available are distributed to the Tribe[s] and Alaskan Native villages that are eligible for the funding." AR002.15; *see also* AR002.58 (Mr. Kowalski stating that the question

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before Treasury is "what is the appropriate share for each of the 754 [sic][3] Tribes"). In response to a question from the Chief of the United Houma Nation as to whether state-recognized tribes would be eligible for funding, an unidentified speaker stated, "I think it's Federally recognized," and then Mark Cruz, Deputy Assistant Secretary for Policy and Economic Activity at Interior, stated, "[y]eah, correct, Federally recognized." AR002.111. No mention was made in the course of the first two-hour consultation that Alaska Native regional corporations or Alaska Native village corporations, for-profit corporations chartered under Alaska law pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1629h ("ANCSA"), would be considered eligible to receive Title V funds. AR002. During the second consultation, on April 9, 2020, the Departments again made no suggestion that Treasury was considering deeming ANCs eligible for Title V funds. AR006.

On or about April 14, 2020, Treasury posted a Certification for Requested Tribal Data form on its website, requesting various types of information from Tribal governments for use in the disbursement of Title V funds. ECF No. 3-8 at 15-16.[4] This Certification form provided the first public indication that Treasury intended to distribute coronavirus relief funds to ANCs—it defined "Population" to include "Total number of . . . shareholders," and it defined "Land Base" to include "Total number of land acres . . . selected pursuant to [ANCSA]." *Id.* at 15. Nothing in the Administrative Record reflects any deliberation by Treasury regarding the allocation of Title V funds to ANCs prior to publication of this form. Thereafter, numerous Tribes, including several Plaintiffs, objected strenuously to the inclusion of ANCs. AR009.126-131; AR010e.

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[3] There are 574 federally recognized Indian tribes. *See* 85 Fed. Reg. 5462-01 (Jan. 30, 2020).
[4] Counsel for the Secretary confirmed to undersigned counsel that this Certification form is part of the Administrative Record and will be included in a revised AR007.

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On April 17, 2020, the Confederated Tribes Plaintiffs filed this action, challenging the Secretary's decision to pay Title V funds to ANCs. ECF No. 1. Early on the morning of April 20, the Confederated Tribes Plaintiffs moved for a temporary restraining order and preliminary injunction enjoining the Secretary from distributing relief funds to ANCs. ECF No. 3.[5] At some point that day, Treasury's Office of General Counsel requested the views of the Department of the Interior on the eligibility of ANCs for Title V funding. AR011.1. The next day, Interior Solicitor Daniel Jorjani responded in a two-page letter "that it is the Department's position that ANCs are eligible for such funding." AR011.1. The Solicitor stated that, because the Indian Self Determination and Education Assistance Act definition of "Indian tribe," incorporated by reference in the CARES Act, includes ANCs as part of its list of entities that may qualify as tribes, "it is unquestionable" that ANCs so qualify. *Id.* However, nowhere in his brief discussion did he mention the definitional clause limiting Indian tribes to those entities "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians," *see* 25 U.S.C. § 5304(e). AR011. With respect to Title V's requirement that payment be made only to a "Tribal government"—that is, the "recognized governing body" of an Indian tribe—the Solicitor suggested that the definition of "Indian tribe" should "override" this language, and that an ANC board of directors should be treated as the "equivalent of a federally-recognized tribal government." AR011.2.

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[5] The Confederated Tribes Plaintiffs filed an amended complaint adding additional plaintiffs on April 21, 2020. ECF No. 7. The Sioux Plaintiffs filed a separate action and motion for preliminary injunctive relief on April 22, 2020. Case No. 1:20-cv-01059-APM, ECF Nos. 1, 4. The Ute Tribe filed a separate action and motion for a temporary restraining order on April 23, 2020. Case No. 1:20-cv-01070-APM, ECF Nos. 1, 5. The Court then consolidated all three cases. Minute Order, Case No. 1:20-cv-01059-APM (Apr. 23, 2020); Minute Order, Case No. 1:20-cv-01070-APM (Apr. 24, 2020).

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On April 23, 2020, Treasury's General Counsel Brian Callahan recommended, solely on the basis of Mr. Jorjani's letter, that the Secretary determine that ANCs are eligible to receive coronavirus relief funds. AR013.1. Nothing in the Administrative Record reflects any further or independent analysis by Treasury of this question. The Secretary concurred the same day, and Treasury posted a document to its website confirming its decision to distribute Title V funds to ANCs. AR014. The Court heard arguments on Plaintiffs' motions for preliminary injunctive relief the next day. Minute Entry (Apr. 24, 2020).

On April 27, 2020, the Court granted Plaintiffs' motions in part. ECF No. 36 (*Confederated Tribes of Chehalis Reservation v. Mnuchin*, No. 20-CV-01002 (APM), 2020 WL 1984297 (D.D.C. Apr. 27, 2020) ("Mem. Op.")); *see also* ECF No. 37. The Court determined for purposes of the motions that "presently, no ANC satisfies the definition of 'Tribal government' under the CARES Act and therefore no ANC is eligible for any share of the $8 billion allocated by Congress for Tribal governments." Mem. Op. 20. It further found that "Plaintiffs easily satisfy their burden to show that they will suffer irreparable injury in the absence of immediate injunctive relief," noting that "[t]hese are monies that Congress appropriated on an emergency basis to assist Tribal governments in providing core public services to battle a pandemic." *Id.* at 15-16. The Court preliminarily enjoined the Secretary from disbursing any Title V funds to ANCs. ECF No. 37 at 2. Subsequently, seven ANCs and two associations representing the twelve regional ANCs and approximately 200 village ANCs intervened in these consolidated cases. Minute Order (May 13, 2020); ECF No. 70.

On May 5, 2020, Treasury posted guidance on its website stating that it would "distribute 60 percent of the $8 billion reserved for Tribal governments immediately based on population," with a minimum $100,000 payment for each Tribal government as defined by the Secretary,

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including each of the more than 200 regional and village ANCs.[6] The guidance further stated that Treasury "will distribute the remaining 40 percent . . . based on employment and expenditures data of Tribes and tribally-owned entities."[7] On May 8, 2020, at a hearing in *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, Case No. 20-cv-01136-APM, 2020 WL 2331774 (D.D.C. May 11, 2020), counsel for the Secretary confirmed that Treasury had begun distributing the $4.8 billion in population-based allocations, and that all regional ANCs and all village ANCs had been allocated population-based funds, although those funds are being withheld pursuant to the Court's order. Tr., May 8, 2020, at 18-19. Counsel also stated at a hearing in the instant matter that ANCs would be allocated employment- and expenditures-based funds as part of the second tranche of payments, Tr., May 7, 2020, at 8, which the Secretary has represented to this Court will be determined by June 4, 2020, *Agua Caliente*, ECF No. 31-1 at 2.

III. ARGUMENT

A. Standard of Review

The Administrative Procedure Act ("APA") authorizes judicial review of federal agency action. 5 U.S.C. § 702. In APA cases, "Rule 56 of the Federal Rules of Civil Procedure, the ordinary standard for summary judgment, does not apply. Instead, the district court sits as an appellate tribunal and the entire case on review is a question of law." *Rocky Mountain Health Maint. Org., Inc. v. Azar*, 384 F. Supp. 3d 80, 88 (D.D.C. 2019) (Mehta, J.) (citation and quotation marks omitted). The court must decide "whether as a matter of law an agency action is

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[6] U.S. Treasury Dep't, *Coronavirus Relief Fund Allocations to Tribal Governments* 2, 3 (May 5, 2020), https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf (last visited May 28, 2020).

[7] *Supra* note 6, at 2.

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supported by the administrative record and is otherwise consistent with the APA standard of review." *Cigar Ass'n of Am. v. U.S. Food and Drug Admin.*, Case No. 1:16-cv-01469 (APM), Case No. 1:18-cv-01797 (APM), 2020 WL 532392, at *7 (D.D.C. Feb. 3, 2020) (Mehta, J.) (quotation marks omitted). Based on its determination of the law, the reviewing court shall hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A).

B. ANCs Are Not "Tribal Governments" Under the Plain Language of Title V

The "starting point" for statutory analysis "is the statutory text. And where, as here, the words of the statute are unambiguous, the judicial inquiry is complete." *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003) (citation and quotation marks omitted). Title V mandates that the Secretary disburse funds to "Tribal governments." 42 U.S.C. § 801(a)(2)(B). Title V defines a "Tribal government" as "the recognized governing body of an Indian Tribe," *id.* § 801(g)(5), and provides that "[t]he term 'Indian Tribe' has the meaning given that term in section 5304(e) of Title 25 [the Indian Self-Determination and Education Assistance Act ("ISDEAA")]," *id.* § 801(g)(1). In turn, ISDEAA defines an "Indian tribe" as

> any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians[.]

25 U.S.C. § 5304(e). "Thus, taken together, Congress allocated $8 billion in the CARES Act 'for making payments to' 'the recognized governing body of' 'any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional [or] village corporation . . . , which is recognized as eligible for the special programs and services provided

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by the United States to Indians because of their status as Indians.'" Mem. Op. 19-20 (citations omitted). Because ANCs do not presently meet these requirements, they are not "Tribal governments" eligible to receive Title V funds.

1. ANCs Are Not "Indian Tribes" Under the CARES Act

ISDEAA defines an "Indian tribe" using a series of parallel nouns: "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation[.]" 25 U.S.C. § 5304(e). This definition further contains an eligibility clause that limits its scope: "which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Mem. Op. 20. Under the series-qualifier canon, which reflects ordinary textual understanding, "'[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series,' a modifier at the end of the list 'normally applies to the entire series.'" *Lockhart v. United States*, 136 S. Ct. 958, 970 (2016) (Kagan, J., dissenting) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* ("Scalia & Garner") 147 (2012)); *United States v. Laraneta*, 700 F.3d 983, 989 (7th Cir. 2012) ("[T]he 'series-qualifier' canon . . . provides that a modifier at the beginning or end of a series of terms modifies all the terms."). A straightforward application of this canon dictates that "the eligibility clause applies equally to all entities and groups listed in the statute, including 'any Alaska Native village or regional or village corporation.'" Mem. Op. 21. There is no plausible construction of the definition under which the eligibility clause does not apply to ANCs.[8] Accordingly, "any Alaska

[8] The other possible construction is suggested by the last antecedent rule, pursuant to which "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows[.]" *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); *see also* Scalia &

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Native village or regional or village corporation" qualifies as an "Indian tribe" only if it is "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* Mem. Op. 24 ("[T]he court cannot ignore the clear grammatical construct of the ISDEAA definition, which applies the eligibility clause to every entity and group listed in the statute.").

ANCs indisputably do not satisfy the terms of the eligibility clause, which has a well-defined, statutorily prescribed meaning. In the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 ("List Act"), Congress provided that "[t]he Secretary [of the U.S. Department of the Interior] shall publish in the Federal Register a list of all Indian tribes which the Secretary *recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians*." 25 U.S.C. § 5131(a) (emphasis added). Congress, that is, required the Secretary of the Interior to publish a list of those Indian entities satisfying the eligibility clause. Pursuant to "the most rudimentary rule of statutory construction . . . courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes:

> "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them. . . . If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute . . . ; and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute."

Garner at 144-46. Under this construction, the same result obtains in this case, as the eligibility clause would still apply to "any Alaska Native village or regional or village corporation."

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Branch v. Smith, 538 U.S. 254, 280-81 (2003) (Scalia, J.) (quoting *United States v. Freeman*, 3 How. 556, 564-65 (1845)).

Because the List Act and ISDEAA are *in pari materia*, they should be "interpreted together, as though they were one law." Scalia & Garner at 252. And indeed they have been. "[T]he government has taken the position, and courts have agreed, that the definition of 'Indian tribe' in various federal statutes must be read in conjunction with the List Act." Mem. Op. 27. For example, in *Wyandot Nation of Kansas v. United States*, 858 F.3d 1392 (Fed. Cir. 2017), the Federal Circuit considered whether a tribe not appearing on the Secretarial list required under the List Act could nevertheless fall within the purview of the Trust Fund Management Reform Act, 25 U.S.C. § 4001(2), which contains the same definition of an Indian tribe, including the same eligibility clause language, incorporated in the CARES Act. The United States argued that the eligibility clause "is a phrase of art defined in the List Act," that "Congress enacted the Reform Act and List Act a mere eight days apart and used identical language to define 'Indian tribe' in each statute," and that the Nation's "absence from this list is dispositive of its status as a non-federally-recognized entity." Brief of the United States, *Wyandot*, 858 F.3d 1392 (No. 2016-1654), 2016 WL 4442763, at *24, *35. The Federal Circuit agreed, holding that the Nation was not entitled to an accounting under the Reform Act because it was not on the List of Recognized Tribes. *Wyandot*, 858 F.3d at 1398.

Similarly, in *Slockish v. U.S. Federal Highway Administration*, 682 F. Supp. 2d 1178, 1202 (D. Or. 2010), the court agreed with the United States that the tribal plaintiffs could not state a claim under the National Historic Preservation Act, which again uses the same definition of "Indian tribe" as the CARES Act, because they did not appear on the Secretary's prescribed

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list. The federal government has likewise emphasized the significance of ANCs' absence from this list for purposes of contracting under ISDEAA. *See* United States' Response in Opposition to Motion for Preliminary Injunction ("U.S. Resp.") at 18, *Ukpeagvik Inupiat Corp. v. U.S. Dep't of Health & Human Servs.*, No. 3:13-cv-00073-TMB, 2013 WL 12119576 (D. Alaska May 20, 2013) (Dkt. 22) (disputing ANC's claim that it was a "tribe," and arguing by reference to the List of Recognized Tribes that the ANC "is not, nor ever has been, a federally recognized tribe such as the Native Village of Barrow Inupiat Traditional Government"); *see also infra* at 35 (discussing *Ukpeagvik*, 2013 WL 12119576).

No ANC presently satisfies the eligibility clause. As the List Act requires it to do annually, on January 30, 2020, Interior published its list of Indian entities recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 85 Fed. Reg. 5,462–01 (Jan. 30, 2020). The list includes "Indian Tribal Entities Within The Contiguous 48 States" as well as "Native Entities Within the State of Alaska." *Id.* at 5,462, 5,466 ("We have continued the practice of listing the Alaska Native entities separately for the purpose of facilitating identification of them."). While the list includes 229 Alaska Native villages—including Plaintiffs Akiak Native Community, Asa'carsarmiut Tribe, Aleut Community of St. Paul Island, Native Village of Venetie, Arctic Village, and Nondalton Village—*it does not include any Alaska Native regional or village corporations*.

The Secretary has conceded that no ANC satisfies the eligibility clause. Tr., Apr. 24, 2020, at 39 ("THE COURT: . . . Is it the government's position that a Native Alaska individual village corporation could qualify under the eligibility clause? MR. LYNCH: No, Your Honor, they're not going to be—they're not going to be recognized as eligible . . . ."). Under the plain

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language of the definition of an Indian Tribe in the CARES Act, this fact is fatal to the ANCs' eligibility for governmental Title V funding.

To avoid this conclusion, the Secretary and the ANCs have urged the counter-textual position that the eligibility clause does not apply to the ANCs at all. Mem. Op. 24. Their attempt to write the eligibility clause out of the Title V definition is likewise reflected in the Administrative Record. The Solicitor of the Interior's terse two-page letter to the General Counsel of the Department of the Treasury *does not even mention the eligibility clause*, conspicuously omitting it when quoting the definition of "Indian tribe." AR011.1. But statutory language cannot be dismissed so cavalierly, and as this Court has observed, "a straightforward reading of the eligibility clause of the ISDEAA definition cannot be reasonably construed to exclude ANCs." Mem. Op. 25.[9] Because no ANC presently satisfies the eligibility clause, as a matter of ordinary principles of statutory construction "no ANC can partake in the $8 billion

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[9] The Secretary's alternative argument—that the eligibility clause should be given a different meaning for purposes of the CARES Act because the List Act definition of "Indian tribe," 25 U.S.C. § 5130(2) ("any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe"), does not specifically reference ANCs—also fails. *See* Mem. Op. 30. The definitions do not differ in any way suggesting that ANCs are not covered by the eligibility clause. The Alaska clause in ISDEAA on which the Secretary places freight is introduced by the term "including," which connotes that "any Alaska Native village or regional or village corporation" is a subset of "any Indian tribe, band, nation, or other organized group or community." This is because the term "including" introduces examples, not an all-inclusive list. *See Fed. Land Bank of St. Paul v. Bismarck Lumber Co*., 314 U.S. 95, 100 (1941); Scalia & Garner at 132 (discussing the nonexclusive "include" canon). Thus, the lack of an explicit *reference* to ANCs in the List Act cannot be read as an explicit *exclusion* of ANCs from that act or as exempting ANCs from the eligibility clause as defined through that act. Moreover, the case law above is clear that the eligibility clause *is* read *in pari materia* with the List Act. Mem. Op. 30. By giving the same term of art different meanings in two statutes, both of which define the government-to-government relationship between Indian tribes and the United States, the Secretary would create the very statutory clash that the canon forbids.

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funding set aside for Tribal governments," *id.* at 21, and the inquiry should end there. "In statutory construction, we begin 'with the language of the statute.' If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent'—as is the case here—'[t]he inquiry ceases.'" *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (quoting *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002)).

2. ANCs Do Not Have "Recognized Governing Bodies"

The Secretary may not disburse Title V funds to ANCs for a second critical reason—an ANC is not a Tribal government with a "recognized governing body." Title V defines a "Tribal government" as "the recognized governing body of an Indian Tribe." 42 U.S.C. § 801(g)(5). Federally cognizable Indian tribes are *recognized* and have *recognized* governing bodies, while state-chartered corporations do not. The Secretary has argued that the definition of "Tribal government" and the separate definition of "Indian Tribe" "should not be read as two independent requirements. That is, a beneficiary of the Fund need not demonstrate both that it is an 'Indian tribe' and also that it has a recognized governing body." ECF No. 21 at 18. The Solicitor's letter to Treasury argues the same, asserting that because the phrase "recognized governing body" is not independently defined in the CARES Act, the definition of "Indian Tribe" should "override" it. AR011.2. But Congress set forth two separate terms in defining a Tribal government, and neither the Secretary nor the Solicitor is free to disregard one entirely. *See*, *e.g.*, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." (quotation marks omitted)); Scalia & Garner at 225 ("Definition sections and interpretation clauses are to be

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carefully followed.").

The phrase "recognized governing body" has a distinct meaning in federal Indian law. "Recognized" or "recognition" is a well-established term of art in the field. *See*, *e.g.*, H.R. Rep. No. 103-781, at 2 (1994) ("'Recognized' is more than a simple adjective; it is a legal term of art."); *Mackinac Tribe v. Jewell*, 87 F. Supp. 3d 127, 131 (D.D.C. 2015) ("Federal 'recognition' of an Indian tribe is a term of art[.]"), *aff'd*, 829 F.3d 754 (D.C. Cir. 2016); Cohen's Handbook of Federal Indian Law § 3.02[3], at 133-36 (Nell Jessup Newton ed., 2012) ("Cohen") (discussing same). With respect to tribal entities, the term "recognized" or "recognition" denotes that the federal government has formally acknowledged a tribe as a political entity and maintains a government-to-government relationship with it. This recognition "is no minor step":

> A formal political act, it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a "domestic dependent nation," and imposes on the government a fiduciary trust relationship to the tribe and its members. Concomitantly, it institutionalizes the tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary. Finally, it imposes upon the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the tribe and its members.

H.R. Rep. No. 103-781, at 2-3 (footnotes omitted); *see also Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (Recognition is "a formal political act confirming the tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government." (quotation marks omitted)); *Mackinac Tribe*, 87 F. Supp. 3d at 131 (similar).

"Recognized" does not suddenly lose its term-of-art status when applied to tribal governing bodies. Indeed, recognition of a government-to-government relationship is *premised* on the United States' recognition that a tribal governing body exists through which it can

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conduct such a relationship. *See*, *e.g.*, *Mackinac Tribe*, 87 F. Supp. 3d at 130 ("[B]efore an Indian tribe can qualify for this special status, it must be 'recognized' by the United States and must organize a tribal government."). With respect to such governing bodies, the United States typically engages with, and hence recognizes, the body duly selected to exercise governmental authority for a tribe pursuant to the tribe's own laws. *See*, *e.g.*, *Cayuga Nation v. Bernhardt*, 374 F. Supp. 3d 1, 12-13 (D.D.C. 2019). Situations do arise, however, where a dispute exists as to which tribal body properly enjoys governmental authority. In those situations, the United States chooses the body with which it will conduct government-to-government relations—that is, it determines the "recognized governing body" for purposes of the federal relationship. *See*, *e.g.*, *Seminole Nation of Okla. v. Norton*, 223 F. Supp. 2d 122, 125 (D.D.C. 2002) (conflict over who the BIA should "recognize . . . for the purpose of conducting government-to-government relations"); *Cayuga Nation*, 374 F. Supp. 3d at 4 (same); *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 150 (D.D.C. 1999) (same); *Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983) (same).

Various statutes confirm that "recognized" retains its term-of-art status when applied to governing bodies. For example, the statute conferring jurisdiction over federal claims brought by tribes reflects the understanding that the Secretary of the Interior recognizes Tribal governing bodies in providing that "[t]he district courts shall have original jurisdiction of all civil actions, brought by *any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior*, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1362 (emphasis added). Courts interpreting this statute have defined this phrase by giving "recognized" its usual term-of-art meaning. *See*, *e.g.*, *Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1094-97, 1100 (9th Cir. 1994) (concluding for purposes of jurisdiction that the Pit River Home and Agricultural Cooperative

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Association was not federally recognized with a recognized governing body, and for purposes of sovereign immunity that the Pit River Tribal Council was the recognized governing body of the Pit River Indian Tribe); *Big Sandy Rancheria Enters. v. Becerra*, 395 F. Supp. 3d 1314, 1325-26 (E.D. Cal. 2019) (holding that tribal corporation lacked recognized governing body). *See also infra* at 35-36 (discussing the term "recognized governing body" as it appears in ISDEAA and the administrative construction of the same).

Against this backdrop, where "recognized" has a well-established meaning reflected in both statute and case law, and applicable both to tribes and to their governing bodies, the Solicitor of the Interior's cursory suggestion to the Treasury Department that "recognized" has no settled meaning in the federal Indian law context is nothing short of astonishing. AR011.2. Indeed, the Department of the Interior has defined the term "recognized governing body" in duly adopted regulations that belie the Solicitor's suggestion and precisely match the accepted meaning of the phrase: "Recognized governing body means the tribe's governing body recognized by the Bureau [of Indian Affairs] for the purposes of government-to-government relations." 25 C.F.R. § 81.4. Nothing in Title V suggests that Congress used "recognized governing body" in any way other than with respect to this well-accepted meaning, one that comports fully with and reinforces Congress's definition of an Indian Tribe as encompassing the federally recognized tribes found on the Secretary's statutorily prescribed list.

As Defendant Intervenor ARA (the association of regional ANCs) itself admits, ANCs have no government-to-government relationship with the United States. *See*, *e.g.*, ANCSA Regional Ass'n, *Overview of Entities Operating in the Twelve Regions*, https://ancsaregional.com/overview-of-entities (last visited May 28, 2020) ("[F]ederally recognized tribes in Alaska possess a government-to-government relationship with the federal

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government. . . . Alaska Native regional corporations do not possess a government-to-government relationship with the federal government."). They accordingly do not possess recognized governing bodies. While the Solicitor suggested that the Secretary should simply wave off this statutory requirement and treat an ANC board of directors as the "equivalent of a federally recognized tribal government," AR011.2, the text does not allow for such a radical conclusion. "[I]t is a 'cardinal rule of statutory construction' that, when Congress employs a term of art, 'it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken[.]'" *F.A.A. v. Cooper*, 566 U.S. 284, 292 (2012) (quoting *Molzof v. United States*, 502 U.S. 301, 307 (1992)); *see also Neder v. United States,* 527 U.S. 1, 23 (1999) (absent some other indication, "Congress intends to incorporate the well-settled meaning of the common-law terms it uses").

The case law reinforces this conclusion. For example, when an ANC sought to pierce the sovereign immunity of the State of Alaska, the Ninth Circuit concluded that because the ANC was "*not a governing body*, it [did] not meet one of the basic criteria of an Indian tribe." *Seldovia Native Ass'n v. Lujan*, 904 F.2d 1335, 1350 (9th Cir. 1990) (emphasis added). The Circuit explained that the ANC, in contrast to recognized Alaska Native villages, was "not a governmental unit with a local governing board organized under the Indian Reorganization Act[.]" *Id.* Rather, it was a "Village Corporation organized under the laws of the State of Alaska[.]" *Id.* (quotation marks omitted). Similarly, in *Pearson v. Chugach Government Services Inc*., 669 F. Supp. 2d 467, 469 n.4 (D. Del. 2009), the district court rejected an ANC's claim that it was exempt from federal antidiscrimination statutes and possessed tribal sovereign immunity, explaining that "ANCs are not federally recognized as a 'tribe' when they play no role

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in tribal governance . . . . [T]he Court can find no evidence to suggest, that they are governing bodies." *See also*, *e.g.*, *Aleman v. Chugach Support Servs., Inc*., 485 F.3d 206, 213 (4th Cir. 2007) (comparing ANCs to Indian tribes and concluding that "Alaska Native Corporations and their subsidiaries are not comparable sovereign entities"); *Barron v. Alaska Native Tribal Health Consortium*, 373 F. Supp. 3d 1232, 1240 (D. Alaska 2019) (concluding that "[u]nlike an Alaska Native Corporation," an entity created by and operating as an arm of Alaska Native villages "promotes tribal self-determination and fulfills governmental functions").

In sum, as this Court well recognized in its preliminary injunction opinion, because the term "recognized" is a "legal term of art . . . Congress's decision to qualify only 'recognized governing bod[ies]' of Indian Tribes for CARES Act funds must be viewed through this historical lens." Mem. Op. 22; *see also id.* at 31 ("[G]iven the history and significance of the term 'recognition' in Indian law, the court doubts that Congress would have used the term if it did not mean to equate it with federal recognition. The word 'recognize' as it appears in the CARES Act is thus best understood as a legal term of art[.]"). Congress's careful use of statutory language to connote that only the duly recognized governing bodies of those tribes with which the United States maintains a government-to-government relationship may receive Title V funding commands respect. The Administrative Record lays bare that the Interior and Treasury Departments—in a stark example of agency action contrary to law—sought instead simply to wish that language away.

C. The Statutory Context Confirms the Plain Language of Title V

Congress earmarked $8 billion for Tribal governments as part of the $150 billion coronavirus relief fund appropriated for "States, Tribal governments, and units of local

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government" in Title V of the CARES Act. 42 U.S.C. § 801(a)(1), (a)(2)(B). While Title I (including provisions for paycheck protection, small business development, and bankruptcy), Title II (including unemployment assistance, individual relief checks, employee retention credits, delayed payroll taxes, and increased business interest deduction), and Title IV (including loans to specific industries, credit protection, and a foreclosure moratorium) direct relief to private businesses and individuals, Title V is directed to sovereign governments and their political subdivisions. These governments must use Title V funds for "necessary expenditures" incurred due to the COVID-19 public health emergency that "were not accounted for in the budget most recently approved . . . for the State or government[.]" 42 U.S.C. § 801(d)(1)-(2).

The definition of "Tribal government" must be read in this context. *See*, *e.g.*, *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."); *Carlson v. Postal Regulatory Comm'n*, 938 F.3d 337, 349 (D.C. Cir. 2019). In Title V, Congress placed Tribal governments alongside and on the same plane as states and units of local government. Under the long-accepted associated-words canon, *noscitur a sociis*, this statutory fact is not to be ignored. *Lagos v. United States*, 138 S. Ct. 1684, 1688-89 (2018) ("*noscitur a sociis* [is] the well-worn Latin phrase that tells us that statutory words are often known by the company they keep"); Scalia & Garner at 195 ("When several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.").

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Congress defined "State" in Title V as "the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa," and "unit of local government" as "a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000." 42 U.S.C. § 801(g)(2), (g)(4). As this Court observed:

> A "government" is commonly understood to refer to "[t]he sovereign power in a country or state" or "organization through which a body of people exercises political authority; the machinery by which sovereign power is expressed." *Government*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also Government*, MERRIAM-WEBSTER DICTIONARY ("[T]he body of persons that constitutes the governing authority of a political unit or organization," or "the organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usually classified according to the distribution of power within it").

Mem. Op. 23 (footnote omitted).

Federally recognized Tribal governments share in these incidents of sovereign authority. As the Supreme Court explained in *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*, 554 U.S. 316 (2008):

> For nearly two centuries now, we have recognized Indian tribes as distinct, independent political communities qualified to exercise many of the powers and prerogatives of self-government. . . .
>
> As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, . . . to determine tribal membership, and to regulate domestic relations among members.

Id. at 327 (citations and quotation marks omitted); *see also*, *e.g.*, Cohen § 3.02[3], at 133-36. The status of Alaska Native villages as *governments* is underscored by the Millennium Agreement "executed between each of the federally recognized sovereign Tribes of Alaska . . . , through their Tribal Governments, and the State of Alaska, through its Governor, in order to

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better achieve mutual goals through an improved relationship between their governments." Millennium Agreement Between the Federally Recognized Sovereign Tribes of Alaska and the State of Alaska ¶ 2 (Apr. 11, 2001), https://dec.alaska.gov/media/10978/millennium-agreement.pdf (last visited May 28, 2020). The agreement creates a permanent State-Tribal forum to maintain ongoing dialogue that "shall include Tribal government political leaders or their designees and the Governor or his designee and appropriate cabinet officials," *id.* ¶ 21, and confirms that "[t]he government-to-government relationships between the Tribes and the State of Alaska shall in no way alter or diminish the unique relationship that Tribal governments have with the federal government or any other government," *id.* ¶ 32.

ANCs, however, are of an entirely different ilk. As the Supreme Court explained in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 534 (1998), they are "state-chartered and state-regulated private business corporations[.]" By statute, all regional ANCs are for-profit corporations incorporated under the laws of Alaska. 43 U.S.C. § 1606(d). All village ANCs have also chosen to organize as for-profit entities. "ANCSA itself as eventually passed, wound up allowing incorporation of a village as either 'a business for profit or nonprofit corporation,' 43 U.S.C. § 1607(a). None of the villages went the non-profit route because they were advised that such an organizational form would present corporate law obstacles to the distribution of dividends to their members." U.S. Dep't of the Interior, Sol. Op. M-36975, 86 n.225 (Jan. 11, 1993), https://www.doi.gov/sites/doi.gov/files/uploads/m-36975.pdf (last visited May 28, 2020) (citation omitted). Like other corporations, ANCs have corporate boards of directors and are owned by private shareholders, including non-Indians. *See* 43 U.S.C.

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§§ 1606(f), (h)(2), (h)(3)(d), 1607(c). In 2017, ANCs had combined revenues of $9.1 billion and employed tens of thousands of people worldwide. Mem. Op. 5.

As for-profit business corporations—whose operations include oil and gas drilling, refining, and marketing; mining and other resource development; government and military contracting; real estate; and construction—ANCs are self-evidently not governments, and they have never been understood as such. In 1977, the American Indian Policy Review Commission ("AIPRC") found that "[t]he Alaska Native tribes (referring, of course, to the historic and traditional tribal entities, not to the Native corporations organized under the Settlement Act), just as the tribes of the lower 48, are domestic sovereigns." Sol. Op. M-36975 at 6 (quoting AIPRC, *Final Report* 95th Cong., 1st Sess. 490-91 (Comm. Print 1977)). Similarly, the Solicitor of the Interior explained in 1993:

> [The 1991 Amendments to ANCSA] do not disturb the original 1971 scheme under which benefits of the land claims settlement devolved upon corporations organized under state law, rather than Native governmental entities. The 1991 Amendments, for all the specialized rules and corporate reorganization options they may prescribe or authorize, do not alter the character of Native Corporations as non-governmental business organizations.

Id. at 97.

Indeed, ANCs openly represent that they are not Tribal governments. The twelve regional ANCs comprising Defendant Intervenor ARA, including Defendant Intervenors Calista Corporation and Ahtna Inc., avow that they "do not possess a government-to-government relationship with the federal government" and—in language echoing the eligibility clause—that they are not federally recognized tribes "eligible to receive certain federal benefits, services, and

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protections, such as funding and services from the Bureau of Indian Affairs."[10] The Arctic Slope Regional Corporation ("ASRC"), another regional ANC, has likewise represented to Treasury:

> The tribal entities on the North Slope, not ASRC, are the entities recognized by the Department of Interior as having government functions. *See* 78 Fed. Reg. 26384-89 (May 6, 2013). In other words, a governing body of Alaska Natives would constitute an Indian tribal government, but an Alaska Native Corporation would not because it does not exercise governmental functions.

Comments to Notice 2012-75: Proposed Revenue Procedure to Address the Application of the General Welfare Exclusion to Indian Tribal Government Programs Providing Benefits to Tribal Members, Notice 2012-75 DYSON, 2013 WL 3096205, at *2 (May 31, 2013).[11]

Arguing, as the Secretary now does, that these private, business corporations should be treated as governmental entities in the same manner as States, units of local government, and Tribal governments accordingly defies the "commonsense canon of *noscitur a sociis*." *United States v. Williams*, 553 U.S. 285, 294 (2008); *see also Beecham v. United States*, 511 U.S. 368, 371 (1994) ("That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well."). "Reading the CARES Act to allow the Secretary to disburse Title V dollars to for-profit corporations does not jibe with the Title's general purpose of funding the emergency needs of 'governments.'" Mem. Op. 23 (citation omitted). The inclusion of ANCs would increase the number of eligible entities for this limited pool of funds by approximately 210—and of all eligible entities, *more than 25% would not be*

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[10] ANCSA Reg'l Ass'n, *Overview of Entities Operating in the Twelve Regions*, https://ancsaregional.com/overview-of-entities (last visited May 28, 2020).

[11] The Solicitor's characterization of ANCs is likewise clear that Interior does not understand ANCs to be governmental entities in any sense: "ANCs act as economic vehicles in Alaska on behalf of their shareholders, the vast majority of which are members of federally-recognized

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governments at all, but for-profit corporations. As this Court has well summarized: "[T]he question is whether treating an ANC's board of directors as a 'Tribal government' makes sense when the other identified recipients of Title V funds include 'States' and 'units of local government.'. . . It does not." *Id.* at 31.

D. Other Canons of Statutory Construction Do Not Support the Secretary's Counter-Textual Reading of Title V

1. A Plain-Text Reading Does Not Render Superfluous Any Statutory Language

Courts must "interpret a statute to give meaning to every clause and word[.]" *Donnelly v. F.A.A.*, 411 F.3d 267, 271 (D.C. Cir. 2005); *see also* Scalia & Garner at 174-79. The Secretary and the ANCs have argued "that to apply the eligibility clause to ANCs would read the words 'regional or village corporation' out of the statute because ANCs cannot satisfy the eligibility clause." Mem. Op. 24. This argument is wrong as a matter of both statutory construction and history.

In ISDEAA's definition of an "Indian tribe," the eligibility clause is preceded by one that reads: "including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)[.]" 25 U.S.C. § 5304(e). This "Alaska clause" ensures that the definition cannot be read as exclusive of all Alaska Native entities. But that clause—like the clause "tribe, band, nation, or other organized group or community" that precedes it—is phrased in the disjunctive. "Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives." Scalia &

Indian tribes. To the extent that Section 601 funding helped ensure ANC viability during the pandemic, the ultimate beneficiaries (at least in part) would be tribal members." AR011.2.

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Garner at 116; *see also In re Espy*, 80 F.3d 501, 505 (D.C. Cir. 1996) (per curiam) ("[A] statute written in the disjunctive is generally construed as setting out separate and distinct alternatives." (quotation marks omitted)). Thus, when considering three items, "[w]ith the conjunctive list [joined by 'and'], all three things are required—while with the disjunctive list [joined by 'or'], at least one of the three is required, but any one (or more) of the three satisfies the requirement." Scalia & Garner at 116. Accordingly, nothing in the plain language of the ISDEAA definition as incorporated into the CARES Act compels—or even suggests—the conclusion that Alaska Native villages *and* regional corporations *and* village corporations *must* be deemed Indian tribes.

If application of the eligibility clause to the Alaska clause denied *all* Alaska entities Indian tribe status, one might argue that such application would render text superfluous. But that is not the case. There are 229 Alaska Native villages that presently satisfy its terms. Mem. Op. 24. As this Court explained: "The possibility that ANCs might not qualify under the eligibility clause is hardly fatal to carrying out Congress's purpose under ISDEAA. . . . Alaska Native villages are . . . able to fulfill ISDEAA's purpose of allowing Indian tribes to assume responsibility for federal aid programs that benefit its members; Congress expressed no preference for ANCs to fulfill the statute's objectives." *Id.* Under this Court's interpretation of the ISDEAA definition in its preliminary injunction opinion, the words of the Alaska clause have properly been given effect.

The history of ISDEAA offers important context. ANCSA was signed into law in December 1971. Just one year later, in February 1973, Congress took up the bill that would become ISDEAA. The original bill defined "Indian tribe" as "any Indian tribe, band, nation, or

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other organized group or community, *including any Alaska Native community as defined in the Alaska Native Claims Settlement Act*, for which the Federal Government provides special programs and services because of its Indian identity." S. 1017, 93d Cong., 1st Sess. (Feb. 26, 1973) (emphasis added). The second iteration incorporated the eligibility clause. S. Rep. No. 93-682, at 285 (Feb. 7, 1974) (defining "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act, which is *recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*" (emphasis added)). The problem with both iterations was that the phrase "Alaska Native community" appears nowhere in ANCSA. Pub. L. No. 92-203, § 3, 85 Stat. 688, 689 (Dec. 18, 1971). Congress accordingly revised the definition, substituting "any Alaska Native village or regional or village corporation" for the phrase "any Alaska Native community." But the eligibility clause remained and continued to apply to all Alaska entities.

Through its definition, Congress left the door open for ANCs to qualify as Indian tribes under ISDEAA. As discussed below, the Secretary of the Interior has determined over time not to include these state-chartered corporations on the list of entities recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. While that has consequences, it does not render any statutory language superfluous. Certain Alaska entities have been included on the List of Recognized Tribes and others have not, and that fits comfortably with the disjunctive structure of the Alaska clause.

2. Congress Has Not Ratified Any Authoritative, Well-Settled Judicial or Agency Interpretation of the ISDEAA Definition of "Indian Tribe" Running Contrary to Its Plain Meaning

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Lacking support in the text, the Secretary and ANCs have pointed to case law and agency practice to advance their position. They claim that federal agencies have treated ANCs as "Indian tribes" for purposes of ISDEAA, that the Ninth Circuit sanctioned such treatment in 1987, and that ANCs should accordingly receive coronavirus relief funds under the CARES Act as enacted in 2020. As this Court noted, "[t]he unstated assumption of this argument is that Congress is presumed to have known about these interpretations of ISDEAA and, by incorporating its definition of 'Indian tribe' into the CARES Act, Congress meant to make ANCs eligible for Title V funding." Mem. Op. 25. The argument fails for three reasons.

First, the contention "is counter-textual," *id.*, and neither judicial decision nor agency practice can supplant the plain meaning of a statute. The Court's role is to enforce the statutes as written, regardless of any contrary interpretation. Thus, a judicial decision, even if longstanding, cannot override the plain meaning of statutory text. *See*, *e.g.*, *Milner v. Dep't of Navy*, 562 U.S. 562, 575-76 (2011) (rejecting argument that construction of FOIA exemption by the D.C. Circuit should continue because it "ha[d] been consistently relied upon and followed for 30 years by other lower courts" and stating that "[i]t would be immaterial even if true, because we have no warrant to ignore clear statutory language on the ground that other courts have done so" (quotation marks omitted)). Likewise, "[e]ven an agency's consistent and longstanding interpretation, if contrary to statute, can be overruled." *Carlson*, 938 F.3d at 349; *see also*, *e.g.*, *S.E.C. v. Sloan*, 436 U.S. 103, 118 (1978) ("[T]he courts are the final authorities on issues of statutory construction, and are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." (citations and quotation marks omitted)). The plain

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meaning of the ISDEAA definition thus "surmounts any contrary agency or judicial interpretation." Mem. Op. 26.

Second, no judicial interpretation of the ISDEAA definition of "Indian tribe" exists that can plausibly be claimed to have "settled the meaning" of that provision such that one could presume that Congress endorsed that interpretation in its definition of "Tribal government" in the CARES Act. *See* Mem. Op. 26; *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006) ("[W]hen judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well." (quotation marks omitted) (ellipses in original)). The Secretary and ANCs have pointed the Court to just one judicial decision: *Cook Inlet Native Association v. Bowen*, 810 F.2d 1471 (9th Cir. 1987). But "a lone appellate case hardly counts" as establishing a "'judicial consensus so broad and unquestioned that [a court] must presume Congress knew of and endorsed it.'" *United States v. Garcia Sota*, 948 F.3d 356, 360 (D.C. Cir. 2020) (quoting *Jama v. ICE*, 543 U.S. 335, 349 (2005)); *see also Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 625 (D.C. Cir. 2017) (holding that two circuit court decisions do not "clearly settle[ ] the meaning of [the] existing statutory provision" (quotation marks omitted) (brackets in original)). *Compare Merrill Lynch*, 547 U.S. at 85 (citing multiple Supreme Court cases interpreting the statutory phrase at issue to hold that meaning was settled).

Moreover, that lone, decades-old, out-of-circuit decision, which arose in a very narrow factual context, *see infra* at 37, is poorly reasoned. *See Garcia-Sota,* 948 F.3d at 360 (highlighting flaws in sister Circuit opinion on which ratification argument was based). In upholding the agency's reading that the eligibility clause did not apply to Alaska entities, the

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Ninth Circuit in *Cook Inlet* reasoned that it must "*defer*" to the agency interpretation because "the plain language of the [ISDEAA definition] *allows* business corporations created under the [ANCSA] to be recognized as tribes" and because "the legislative history does not indicate that Congress intended to *preclude* the agency interpretation." *Cook Inlet*, 810 F.2d at 1476 (emphasis added). Such reasoning, as detailed above, contorts the unambiguous text of the statute. *See supra* at 13-17.

The decision in *Cook Inlet*, moreover, predates the 1994 List Act in which, as discussed above, Congress directed the Secretary of Interior to publish a list of all entities meeting the eligibility clause. 25 U.S.C. § 5131(a). Post-List Act cases throw the validity of *Cook Inlet* into further doubt. In the decades since, the federal government has taken the position, and courts have agreed, that the same definition of "Indian tribe" as the one Congress incorporated by reference in the CARES Act "must be read in conjunction with the List Act." Mem. Op. 27; *see supra* at 15-16. "In other words, unless the entity or group appears on the Secretary's List, it does not qualify as an 'Indian tribe.'" Mem. Op. 27. In sum, *Cook Inlet* is a single, outdated judicial decision suffering from multiple infirmities—it cannot be said to have "settled the meaning" of "Indian tribe" for purposes of ISDEAA, let alone the CARES Act.

Third, agency practice decidedly does *not* support the Secretary's action. In fact, that practice makes clear that federal agencies do not treat ANCs like federally recognized Indian tribes for purposes of ISDEAA. Some background is informative. ISDEAA authorizes a "tribal organization" to enter into self-determination or "638" contracts with the Bureau of Indian Affairs ("BIA") and the Indian Health Service ("IHS") and thereby receive funding that allows the tribal organization to run programs and services for Indians that would otherwise be run

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directly by the federal government. 25 U.S.C. § 5304(j). ISDEAA defines two types of "tribal organizations." The first is "the recognized governing body of any Indian tribe," and the second is "any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body[.]" 25 U.S.C. § 5304(l). A tribal organization that is not itself the recognized governing body of an Indian tribe may only enter into a 638 contract when authorized to do so by such a governing body. *See* 25 U.S.C. §§ 5321(a)(1), 5304(l) (proviso requiring approval by all benefiting tribes).

Hence ANCs, just like tribal organizations in the lower forty-eight states, *e.g.*, *Gilbert v. Weahkee*, CIV. 19-5045-JLV, 2020 WL 779460, at *3-4, *8 (D.S.D. Feb. 18, 2020), fall into the latter category and may enter 638 contracts when authorized to do so by an Indian tribe's recognized governing body. The decision in *Ukpeagvik Inupiat Corporation* makes this clear. In *Ukpeagvik*, the plaintiff ANC (UIC) moved for a preliminary injunction following resolutions by six federally recognized Alaska Native villages transferring 638-contract funding to a different entity. 2013 WL 12119576, at *1-2. The United States explained that "because UIC wants to provide services to the members of other Alaska Native tribal villages, *UIC must have authorizing resolutions from all these tribal villages* that are within the geographic area that the [hospital] serves," and that "a resolution of support from its own corporate governing body" was insufficient. U.S. Resp. at 18, *Ukpeagvik*, 2013 WL 12119576 (Dkt. 22) (emphasis added). The United States disputed UIC's claim that it was a "tribe," arguing by reference to the List of Recognized Tribes that UIC "is not, nor ever has been, a federally recognized tribe such as the Native Village of Barrow Inupiat Traditional Government." *Id.* The court agreed with the United States and denied plaintiff's motion. *Ukpeagvik*, 2013 WL 12119576, at *2.

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ISDEAA contracting guidelines adopted by IHS in 1981 further confirm that the agency does not treat ANCs like federally recognized Indian Tribes. *See* Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts, 46 Fed. Reg. 27,178–02 (May 18, 1981) ("Alaska Guidelines"). The Alaska Guidelines explain that "[v]illages, as the smallest tribal units under the ANCSA must approve [ISDEAA] contracts which will benefit their members." *Id*. at 27,178. IHS thus recognizes Alaska Native village councils as the "governing body" for purposes of 638 contracting, and provides that this governing body must issue the authorizing resolution to a tribal organization. *Id.* at 27,178-80. *Only if there existed no village council at all* did IHS indicate that it would allow an ANC to *act as a stand-in* for the recognized governing body of *the particular Alaska Native village* for 638-contracting purposes (with a village ANC enjoying priority over a regional ANC). *Id.* at 27,178-79. BIA follows the same order of precedence as IHS, indicating that it would turn to an ANC as a stand-in for a recognized governing body only as a last resort where no Alaska Native village council exists. *See Douglas Indian Ass'n v. Juneau Area Dir., Bureau of Indian Affairs*, 27 IBIA 292, 293 (Apr. 18, 1995). But because all 229 recognized Alaska Native villages have governing councils, the hypothesized situation does not arise in practice.

As for deeming an ANC capable of entering into a 638 contract of its own accord, the agencies have permitted that to happen only in exceptional circumstances—specifically, when Indians are entitled to federally funded services in a geographic area (namely an urban area such as Anchorage) where there exists no federally recognized Alaska Native village to provide the requisite statutory authorization. In these narrow circumstances, the agency may allow the regional ANC to act akin to an Indian tribe for purposes of ISDEAA to ensure there is no gap in

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services. These were precisely the circumstances at issue in *Cook Inlet*, a dispute over whether Cook Inlet Region, Inc. ("CIRI"), the regional ANC, required authorization by villages in the region to provide services in the Anchorage area. *See Cook Inlet Native Ass'n v. Heckler*, No. A84-571 Civil, Mem. of Decision at 5 (D. Alaska Jan. 7, 1986) (attached as Exhibit 1). The district court outlined the facts underlying the agencies' decision to treat CIRI as an "Indian tribe" in this narrow case:

> The contracts which are in dispute are for services to be provided in the Municipality of Anchorage, excluding Eklutna. The contracts in question are not for services to be provided at the village level (outside the Municipality of Anchorage) or for the direct benefit of particular villages, nor are they for services on a regional basis. None of the plaintiff villages is an Indian Reorganization Act council for Anchorage. None of the plaintiff villages provide governmental functions within the Municipality of Anchorage, excluding Eklutna. No plaintiff is the traditional village council or village profit corporation for Anchorage. . . . [T]he federal defendants considered the location of the seven villages, including the plaintiff villages, within the Cook Inlet Region in relation to Anchorage. The federal defendants also considered the composition of the native population in Anchorage. The native villages within the Cook Inlet Region which are recognized as tribes are geographically remote from metropolitan Anchorage with the exception of Eklutna.

Id. at 13-14 (footnotes omitted). The court upheld the agencies' decision, *id.* at 16, and the Ninth Circuit affirmed, *Cook Inlet*, 810 F.2d 1471.

What is even more critical for present purposes is that when Congress considered these same exceptional circumstances in 1997, it enacted a statute that expressly authorized CIRI to enter 638 contracts in Anchorage without village authorization. Pub. L. No. 105-83, § 325(d), 111 Stat. 1543, 1598 (Nov. 14, 1997) ("[Regional ANC] Cook Inlet Region, Inc. . . . pursuant to [ISDEAA] . . . is hereby authorized to enter into contracts or funding agreements . . . for all services provided at or through the Alaska Native Primary Care Center or other satellite clinics in Anchorage or the Matanuska-Susitna Valley without submission of any further authorizing

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resolutions from any other Alaska Native Region, village corporation, Indian Reorganization Act council, or tribe, no matter where located."). In doing so, it mooted the dispute in *Cook Inlet Treaty Tribes v. Shalala* ("*Shalala*"), 166 F.3d 986, 987-89 (9th Cir. 1999).[12]

That Congress acted to grant specific statutory authority to CIRI while the *Shalala* case was pending confirms that Congress did not understand ANCs to already enjoy the same status as Indian Tribes based on *Cook Inlet* or agency practice. *See id.* at 991 ("Section 325(d) *substantively changes the approval process* by removing the requirement of obtaining authorizing resolutions from any village[.]" (emphasis added)). Simply put, Congress would not have passed the statute if it had not needed to. "[W]e are always reluctant to assume a statute is so worthless that Congress was up to—literally—nothing when it bothered to labor through the grueling process of bicameralism and presentment." *Fletcher v. United States*, 730 F.3d 1206, 1210 (10th Cir. 2013) (Gorsuch, J.). The law granting contracting authority to CIRI, moreover, contains several other provisions that make clear Congress's ability—and readiness—to expand the authority of ANCs and other tribal organizations under ISDEAA when it deems such a course appropriate. *See* Pub. L. No. 105-83, §§ 325-326, 111 Stat. at 1598.[13] Title V of the CARES Act is devoid of such language.

The agency practice of *not* treating ANCs in the same manner as those Indian entities that

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[12] In *Shalala*, five Alaska Native villages, including three expressly excluded from the area subject to the compact, "claim[ed] that the IHS was required to seek the Villages' approval before awarding the compact to CIRI." 166 F.3d at 988.

[13] Thus, in Section 209 of the Alaska Land Transfer Acceleration Act, Pub. L. No. 108-452, 118 Stat. 3575, 3586-87 (Dec. 10, 2004), Congress expressly authorized the Secretary of the Interior to enter into contracts with ANCs relating to the selection and surveying of lands conveyed to ANCs under ANCSA. Contracts entered pursuant to specific statutory authorization cannot of course support the Secretary's disregard of the plain language of ISDEAA and the CARES Act.

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do satisfy the eligibility clause is also clear in BIA's actions over the course of four decades. In 1979, BIA first began publishing a list of Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs. *See* 53 Fed. Reg. 52,829–02, 52,832 (Dec. 29, 1988). The initial list did not extend to any Alaska entities at all. *Id.* BIA first included Alaska Native entities on the list in 1982. 47 Fed. Reg. 53,130–03, 53,133-35 (Nov. 24, 1982). That list specified Alaska Native villages with traditional village councils and Indian Reorganization Act or "IRA" village councils, both of which the BIA had dealt with on a government-to-government basis. *See* 58 Fed. Reg. 54,364–01 (Oct. 21, 1993). It did not include ANCs or other types of Alaska entities. The 1983, 1985, and 1986 lists were the same. *See* 48 Fed. Reg. 56,862–02 (Dec. 23, 1983); 50 Fed. Reg. 6055–02 (Feb. 13, 1985); 51 Fed. Reg. 25,115–01 (July 10, 1986). But in 1988, the number of Alaska Native Entities on the list "approximately doubled" when BIA expanded the list to include nine categories of entities, including ANCs and other entities, such as urban corporations, established pursuant to ANCSA. 53 Fed. Reg. 52,829–02, 52,832-33 (Dec. 29, 1988).

This change was short-lived. In 1993, BIA returned to its prior practice and removed all ANCs from the list, leaving only Alaska Native villages. 58 Fed. Reg. 54,364–01. The agency explained why:

> The inclusion of non-tribal entities on the 1988 Alaska entities list departed from the intent of 25 CFR 83.6(b) and created a discontinuity from the list of tribal entities in the contiguous 48 states, which was republished as part of the same Federal Register notice. As in Alaska, Indian entities in the contiguous 48 states other than recognized tribes are frequently eligible to participate in Federal programs under specific statutes. For example, "tribal organizations" associated with recognized tribes, but not themselves tribes, are eligible for contracts and grants under the [ISDEAA]. Unlike the Alaska entities list, the 1988 entities list for the contiguous 48 states was not expanded to include such entities.

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58 Fed. Reg. at 54,365 (citation omitted).[14]

In 1994, only one year after BIA had concluded that ANCs should not be included on the list of eligible entities, Congress enacted the List Act and *required* Interior to publish a list of Indian tribes it "recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 5131(a). In doing so, Congress did not express any doubt or concern about BIA's decision not to characterize ANCs as eligible entities, and ANCs have *never* since appeared on the congressionally prescribed list.[15] If any course of practice is relevant to Congress's understanding when it enacted the CARES Act, surely it is this one—Congress used the eligibility clause to define the proper Tribal recipients of

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[14] Throughout this period, BIA recognized that Alaska Native villages enjoy precedence over any other types of entities for purposes of ISDEAA. *See* 58 Fed. Reg. at 54,366 n.2 (1993) ("Under longstanding BIA policy, priority for contracts and services in Alaska is given to reorganized and traditional governments over non-tribal corporations."); 47 Fed. Reg. at 53,133-53,134 (1982) ("While eligibility for services administered by the Bureau of Indian Affairs is generally limited to historical tribes and communities of Indians residing on reservations, and their members, unique circumstances have made eligible additional entities in Alaska which are not historical tribes. Such circumstances have resulted in multiple, overlapping eligibility of native entities in Alaska. To alleviate any confusion which might arise from publication of a multiple eligibility listing, the following preliminary list shows those entities to which the Bureau of Indian Affairs gives priority for purposes of funding and services.").

[15] As recently as January 2020, the Department of the Interior proposed a rule, "Procedures for Federal Acknowledgment of Alaska Native Entities." 85 Fed. Reg. 37–01 (Jan. 2. 2020). Proposed 25 C.F.R. § 82.2 explains: "The regulations in this part implement Federal statutes for the benefit of Indian Tribes by establishing procedures and criteria for the Department to use to determine whether an Alaska Native entity may be considered an Indian Tribe *eligible for the special programs and services provided by the United States to Indians because of their status as Indians*." *Id.* at 47 (emphasis added). Proposed 25 C.F.R. § 82.4(a) provides that Interior "will not acknowledge . . . [a]n association, organization, or entity of any character formed in recent times unless the entity has only changed form by recently incorporating or otherwise formalizing its existing politically autonomous community[.]" *Id.* This proposed rule makes clear that Interior's decisions as to which Alaska entities satisfy the eligibility clause are not set in stone, but that ANCs differ categorically from the tribal governmental entities to which the eligibility clause applies.

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Title V funding in the face of a quarter-century of consistent agency determinations that ANCs do not satisfy the terms of that clause.

In sum, judicial and administrative interpretations of the ISDEAA definition of "Indian tribe" provide no settled construction that would support a finding that Congress intended the Secretary to disburse Title V funds to ANCs notwithstanding their inability to satisfy the eligibility clause and their lack of recognized governing bodies. To the contrary, agencies have allowed ANCs to step into the shoes of federally recognized Indian tribes only in rare circumstances. The Secretary's attempt to categorically divert Title V funds to all ANCs bears no resemblance to this limited agency practice.

* * *

One final point bears emphasis. Under no circumstances have IHS and BIA previously done what Treasury seeks to do here: to treat ANCs as equals to federally recognized Indian tribes and hence to allow them to compete with tribes for limited funding opportunities. Every dollar of Title V relief funds allocated by the Secretary to an ANC is a dollar that would otherwise be paid to Alaska Native villages and other recognized Tribal governments. As the Court recognized, this simply does not happen under ISDEAA. Mem. Op. 29-30. And here is why—through ISDEAA, "the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities." 25 U.S.C. § 5302(b).[16] The Secretary's enabling of private, state-chartered corporations, which generate

[16] Congress added this language to ISDEAA in 1988 as part of amendments that, per the Senate Select Committee on Indian Affairs, sought to "clarify that the authority for a tribal organization

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billions of dollars in business revenue each year through scores of subsidiaries operating worldwide, to take emergency funds away from recognized Tribal governments in the midst of a crisis requiring the strongest governance possible turns the very goal of ISDEAA, and the government-to-government relationship that undergirds it, on its head. Nothing in the plain language of the CARES Act remotely suggests that Congress sanctioned such a result.

IV. REQUEST FOR RELIEF

For the foregoing reasons, the Secretary's action is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. *See* 5 U.S.C. § 706(2)(A). The Confederated Tribes Plaintiffs respectfully request that the Court grant their motion for summary judgment, vacate the Secretary's decision, and remand to Treasury to determine in an expedited manner an appropriate allocation to federally recognized Indian Tribes of all remaining Title V funds (i.e., those funds previously allocated to ANCs), consistent with the Court's ruling. *See generally Cigar Ass'n*, 2020 WL 532392, at *13. The Confederated Tribes Plaintiffs also request that the Court enter a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that ANCs are not "Tribal governments" for purposes of Title V of the CARES Act, 42 U.S.C. § 801, and that the Secretary's decision to the contrary is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. Finally, the Confederated Tribes Plaintiffs request that the Court retain jurisdiction over this matter and require the Secretary to file a status report with the Court when Treasury has determined a new allocation of funds previously allocated to ANCs, and before it has distributed those funds, in order to ensure Treasury's full compliance with this Court's directives.

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to enter into a self-determination contract with the Secretary is a resolution of the governing body of an Indian tribe or Alaska Native village." S. Rep. No. 100-274, at 22 (1987).

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Dated this 29th day of May, 2020.

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