ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 11, 2020

Consolidated Case Nos. 20-5204, 20-5205 and 20-5209

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

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, et al. [20-5205],

CHEYENNE RIVER SIOUX TRIBE, et al. [20-5209],

UTE TRIBE OF THE UINTAH AND OURAY RESERVATION [20-5204],

Plaintiffs-Appellants,

v.

STEVEN MNUCHIN, SECRETARY, UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Columbia (No. 1:20-cv-01002) (Hon. Amit P. Mehta)

BRIEF OF AMICUS CURIAE ALASKA FEDERATION OF NATIVES IN SUPPORT OF DEFENDANT-APPELLEES

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August 20, 2020

CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), counsel for the Alaska Federation of Natives ("AFN") certifies as follows:

A. Parties and Amici

The Brief of Plaintiff-Appellants Confederated Tribes lists (1) all parties (including intervenors), and amici appearing before the district court, and (2) all parties (including intervenors) appearing in this Court. Amicus Curiae briefs are being filed today by persons (Cook Inlet Region, Inc. and the Alaska Congressional Delegation) who did not appear in the District Court.

B. Rulings Under Review

The ruling under review is the Memorandum Opinion & Order of the District Court (App215, in the Confederated Tribes' Appendix filed with their Brief) granting Defendants' motion for summary judgment.

C. Related Cases

The Court has consolidated Court of Appeals Case Nos. 20-5204, 20-5205, and 20-5209. Counsel is not aware of any other related cases.

DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, AFN states as follows:

General Nature and Purpose of Amicus Curiae AFN

AFN is the oldest and largest statewide Native organization in Alaska. Its membership covers all of the major facets of the Alaska Native community, including: (1) federally recognized Indian tribes ("Sovereign Tribes"), a few of whom are plaintiffs in this case; (2) regional and village Alaska Native Corporations ("ANCs"), some of whom are defendant-intervenors in this case; and (3) regional nonprofit Native organizations and tribal consortia, as well as their respective health care components.

Ownership Interests

AFN is a not-for-profit corporation. There are no parent companies, subsidiaries, affiliates, or companies which own at least 10% of the stock of AFN. AFN has not issued shares or debt securities to the public.

SOURCE OF AUTHORITY TO FILE AND CERTIFICATION REGARDING SEPARATE BRIEFING

AFN received the consent of all parties to file this Brief, and filed a Representation of Consent on August 13, 2020. *See* Circuit Rule 29(b).

After discussion with counsel for amicus curiae movant Cook Inlet Region, Inc. ("CIRI") and for amicus curiae movants Senator Murkowski, Senator Sullivan and Representative Young ("Congressional Delegation"), AFN certifies under

Circuit Rule 29(d) that it is not practicable for AFN, CIRI, and the Congressional Delegation to file a joint brief.

Counsel for the Congressional Delegation represented that Senate Ethics Rules as interpreted by the Senate Ethics Office prevents her clients from joining a brief authored in any part by an attorney paid by any private party, such as AFN.

Counsel for CIRI represented that CIRI was preparing a brief largely devoted to matters unique to CIRI, which is the regional ANC for the Anchorage area. CIRI's brief will discuss an Act of Congress that applies only to CIRI and unique aspects of CIRI's relationship with United States resulting from there being no federally-recognized Sovereign Tribe for substantial portions of the Municipality of Anchorage or the Matanuska-Susitna Valley.

As discussed in its Statement of Interest below, AFN is an umbrella membership association which supports the general interests of members that span the entire Alaska Native Community, including Sovereign Tribes and Regional Health Care Consortia, as well as most ANCs. It would be inappropriate for AFN to join unique arguments that might differentiate one ANC (CIRI) from AFN's other members. Further, AFN in its brief will not be discussing CIRI matters, and so will not duplicate CIRI's discussion of those matters.

/s/ James H. Lister
James H. Lister

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GLOSSARY

AFN	Alaska Federation of Natives
ANCSA	Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified at 43 U.S.C. §§ 1601-1629h)
BIA	Bureau of Indian Affairs, United States Department of the Interior
CARES Act	Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020)
ISDEAA	Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975)
IRA	The Indian Reorganization Act of 1934, 48 Pub. L. No. 73-3863, 48 Stat. 984 (1934)
List Act	Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791
Self-Determination Act	Another name for ISDEAA, citation provided above.
Solicitor	Solicitor of the United States Department of the Interior
Title V	Title V of the CARES Act, "Coronavirus Relief Fund," codified at 42 U.S.C. § 801

The Alaska Federation of Natives ("AFN") respectfully submits this amicus curiae brief in support of affirmance.

STATUTES AND REGULATIONS

Excerpts from statutes and regulations receiving significant discussion in this Brief are printed in an Addendum.

STATEMENT OF IDENTITY AND INTEREST IN CASE

Founded in 1966, AFN is the oldest and largest statewide Native membership organization in Alaska. Its broad and diverse membership includes 175 of the 229 Sovereign Tribes[1] in Alaska that Plaintiff-Appellants mistakenly contend should be the exclusive recipients of Coronavirus Aid, Relief, and Emergency Services ("CARES") Act tribal funding in the State. Pub. L. No. 116-136, § 5001,134 Stat. 281 (codified at 42 U.S.C. § 801). Its membership also includes 165 of the more than 200 regional and village ANCs formed under the Alaska Native Claims Settlement Act ("ANCSA") that the U.S. Department of Treasury has correctly determined are also eligible for funding. 43 U.S.C. § 1601, et seq. Finally, AFN's membership includes all 12 of the regional not-for-profit Alaska Native organizations and tribal consortia ("Native Regional Consortia") which, as relevant here, provide social services and healthcare to Alaska Natives

[1] AFN acknowledges that the inherent self-governance authority over Alaska Natives who are tribal members is vested in the Sovereign Tribes and not the ANCs.

through regional hospitals and village clinics across the State. Treasury did not allow Sovereign Tribes (or ANCs) to include the employee and budgets of their affiliated Native Regional Consortia in their budget request.

Alaska Natives approached Covid-19 with memories of the last pandemic, the 1918 Spanish flu, reverberating in the back of their minds. That pandemic formed a historical trauma still felt by many Native peoples today. The first wave of the Spanish flu largely spared Alaska, but the second wave hit Native peoples with devastating force in 1919.[2] Against this backdrop, AFN, in response to the emerging Pandemic, worked to mobilize the Alaska Native community, including all three components of its membership, as early as January 30, 2020.[3] The first

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[2] Maria Gilson de Valpine, *Influenza in Bristol Bay 1919, "The Saddest Repudiation of A Benevolent Intention"*, 1 (2015). The author writes: "Because of its remoteness, the region had escaped the first wave of influenza arriving in 1919 in the Bristol Bay region of Alaska. However, as the ice melted in 1919 and preparations for fishing season began, the dead, the dying and the orphaned were discovered in appalling numbers." Further, as an example, "Captain Dodge and his medical staff met with Dr. French at the Kanakanak School where they were apprised of 300 sick and dying Natives in neighboring villages and 100 orphans newly transported to the site. A medical party went ashore 'on the evening tide' to survey victims at Coffee Point, where the disease had found a large number of victims. A detail was also sent ashore to 'bury the dead and to shoot stray dogs, a number of which had been feeding upon the bodies of persons who had died unprotected and alone in isolated localities.'" The descendants of the Native children orphaned, collected and transported to new locations, make up a part of the Alaska Native leadership today.

[3] AFN sought and received a briefing from the Center for Disease Control when the Pandemic was still classified as an epidemic in Wuhan, China, which

few months of the present Pandemic largely spared Alaska, but infections predictably began increasing towards the end of the case in the District Court, and continue to rise at high rates. Recent data also shows a race-based disparity, with Alaska Natives being disproportionally infected with the virus, and having a mortality rate four-times the State's population.[4] The CARES Act funding held up by this lawsuit is critical to the Native community's relief efforts. The second wave of the Pandemic has not even started in Alaska. Critical prevention is more important than ever.

I. Factual Background and Overview

The Alaska Native entities which responded to Covid-19 did so under Federal Indian laws and policies specific to Alaska, and a history of self-governance and self-determination, that drastically differs from most of the American Indian experience in the Lower 48. The result is a complex web that spreads the responsibilities for the welfare of Alaska Natives over multiple Native entities, including ANCs, Native Regional Consortia, Native Health Corporations, as well as Native Housing Authorities, rather than concentrating responsibilities

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initiated serious dialogues between AFN, the State of Alaska, private industry, and the U.S. military in Alaska.

[4] T. W. Hennessy, et al, *A case-control study of risk factors for death from 2009 pandemic influenza A (H1N1): is American Indian racial status an independent risk factor?*, 144 Epidemiology and Infection 315 (2015). Available at: https://www.cambridge.org/core/journals/epidemiology-and-infection/article/casecontrol-study-of-risk-factors-for-death-from-2009-pandemic-influenza-ah1n1-is-american-indian-racial-status-an-independent-risk-factor/7FD67DDB890D629DDF963FD3D3B481C3/core-reader

solely in Alaska's Sovereign Tribes. Plaintiff-Appellants baselessly contend that ANCs seek to usurp the sovereignty of Sovereign Tribes through CARES. It was Congress that chose to include ANCs as non-sovereigns in the Act, just as it does with many other Native programs that are not centered on sovereignty.

The Plaintiff-Appellant Tribes ask the Court to ignore Alaska's unique history with the Federal Government and Congress's intent to place Alaska Natives on equal footing with American Indians. They seek to replace a CARES Act funding allocation they allege is over-inclusive with one that would be severely under-inclusive in Alaska, because, as explained below, Congress structured its relationship with Alaska Natives differently than it did for American Indians in the contiguous 48 States ("Lower 48"). As a result, some of what is accomplished in the Lower 48s by Sovereign Tribes is done in Alaska by ANCs.

ANCs manage Native lands and economic resources as a result of the decisions of Congress in ANCSA to: (1) entrust lands and money from the settlement of aboriginal claims to ANCs, rather than to create reservations for Alaska's Sovereign Tribes, 43 U.S.C. §§ 1601, 1606(r), 1611, while (2) clarifying that this different system would not result in Alaska Natives receiving fewer services than American Indians. *Id*., § 1626(d). The continuing close cultural and geographic links between each individual ANC and the Sovereign Tribes within its region are vital to fulfilling this ANCSA requirement. The congressionally-

established boundaries for the 12 regional ANCs mirrors boundaries of tribal affiliation – they were formed on the basis of tribal affiliation and cultural ties, not an arbitrary shareholder format of western culture. As a result, viewing the combination of Alaska Sovereign Tribes and their related ANC(s) produces a picture that look more like a Lower 48 Sovereign Tribe than when one views an Alaska Sovereign Tribe in isolation. For example, ANCs engage in business activities as Congress intended, and so too do the Plaintiff Tribes.[5]

As the District Court correctly held, Congress included ANCs in CARES Act Tribal relief funding through its choice of the Indian Self Determination and Education Assistance Act ("ISDEAA") statutory definition of "Indian Tribe." App194 (all references to "App" are to the Confederated Tribes appendix). Unsurprisingly then, the criteria adopted by the Treasury Department to disburse the funding to American Indians and Alaska Natives lends itself to ANC inclusion – namely employee counts, budgets, and populations. App185. Indeed, that criteria would make no sense without ANC inclusion. Because ANCs rather than Sovereign Tribes manage the vast bulk of Alaska Native lands and economic resources, the employee count and budget criteria on which Treasury is basing

[5] Plaintiff-Appellants' assertions that ANCs engage government contracting (the Alaska analog to the casino businesses of Lower 48 Sovereign Tribes) must not distract from the services to Alaska Natives that ANCs provide. Eligibility for federal programs and funds should in no way be limited by the participation of either ANCs or Tribes in business activities.

much of the CARES Act distributions are naturally found in Alaska much more in the ANCs.[6] Plainly stated, the inclusion of ANCs in the allocation does not result in Alaska Natives "double-dipping" or otherwise securing an unfair advantage under the Act. In contrast to a number of the Plaintiff-Appellants who have substantial historical revenues and employment from gaming and other profit-making ventures, most Sovereign Tribes in Alaska have little economic resources of their own and so can generate only small to non-existent employee counts and budgets to report in CARES Act tribal funding requests. For a discussion of work done by ANCs, see the ANCs' August 18, 2020 Brief at 3-5 ("ANC.Br.")

The situation is exacerbated because, as discussed below, Treasury's allocation plan excludes from CARES Act tribal funding from another large amount of pertinent employee count and budgets – the employees and budgets of the 17 Native Regional Consortia / Tribal Organizations and statewide Native tribal health consortium which provides much of the health and social services to Alaska Natives.[7] The Court should be wary of Plaintiff-Appellants' arguments to

[6] ANCs have developed infrastructure and capability to move quickly, obtain resources and supply chains, mobilize manpower, leverage public-private partnerships to stretch resources, and provide long term perspectives on recovery from the cascading impacts which put at risk the Native people and Native land base if the Pandemic is not brought under control and the economy is unable to recover.

[7] *See* District Court Appendix (DE 90-1) at 490-91 (Treasury summarizes comments from AFN requesting unsuccessfully that Treasury consider affiliated

overturn the part of Treasury's balancing that came out favorable to Alaska Natives, while leaving in place the unfavorable parts. An additional issue exists with the population criteria used by Treasury in allocating CARES Act tribal funding. While many Alaska Natives are members of a Sovereign Tribe, and so could be counted in the population statistics presented in that Tribe's funding application, many other Alaska Natives are not members of a Sovereign Tribe but are Native shareholders of ANCs, and so are included in Treasury's implementation of CARES Act tribal funding through their status as ANC shareholders. *See* 43 U.S.C. § 1602(b) (defining "Alaska Native" primarily by reference to blood quantum, without requiring individuals be a tribal member).

II. Argument

As an amicus rather than a party, AFN's statutory analysis will first take a wide-angle approach that reviews relevant Federal Indian statutes sharing common stock statutory language, and the relation of those statutes to the particular statutory provisions at issue here. AFN will then address the specific statutory text at issue in this case from a narrower angle, but only to provide a line of insight different from that in Defendants' briefs.

Consortiums in determining distributions to Sovereign Tribes). As this is the only record document cited by AFN not in the Confederated Tribes Appendix, we are citing the District Court record directly. See Circuit Rule 30(b). The Native Regional Consortia in Alaska are only eligible for Indian Health Service funding, which is appreciated, but insufficient.

A. Treasury Was Not Required to Accept Plaintiff-Appellants Confederated Tribes Narrow Reading of "Indian Tribe."

As the Court knows, the key term "Indian Tribe" is defined in the CARES Act by incorporating the 1975 ISDEAA definition of that term:

> "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".[8]

As the Federal Defendant and ANC Defendant-Intervenors rightly stress, when Congress in CARES imported the ISDEAA definition of "Indian Tribe," it borrowed a definition that has been construed for decades by both the geographically relevant Court of Appeals (the Ninth Circuit's 1987 *Bowen* decision[9]) and the subject-matter-expert federal agency (the Bureau of Indian Affairs ("BIA"), starting with the 1976 Soller Memo (App137-140)) as including ANCs. *See also infra* Point A.2 (Congress, which is the ultimate arbiter, has since repeatedly adopted the same "Indian Tribe" definition, resulting in a presumption under the canons of statutory construction that it agrees with the expert agency and the reviewing court which affirmed the agency). In confirming that ANCs are not

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[8] 25 U.S.C. § 5304(e).

[9] *Cook Inlet Native Association v. Bowen*, 810 F.2d 1471, 1472-77 (9th Cir. 1987) ("*Bowen*").

recognized by the Department of the Interior ("DOI") as sovereign entities, BIA deflated Plaintiffs argument under the List Act[10] by confirming that ANCs are "made eligible for Federal contracting and services by statute and their non-inclusion on the list [of recognized Sovereign Tribes] below does not affect the continued eligibility of the entities for contracts and services." 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993).[11] A review of related Federal Indian statutes, starting with ANCSA, the statute creating ANCs, shows that Congress makes statute-by-statute decisions on whether to include ANCs in particular programs, developing well understood stock language that here includes ANCs in the "Indian Tribe" definition.

1. Defendant-Appellees' Inclusionary Reading of the CARES Act Comports with ANCSA. Confederated Tribes' Exclusionary Reading Does Not.

In examining where the statutory provisions at issue fit into the broader web of related Indian statutes, one must start with ANCSA, which is the only statute that the "Indian Tribe" definition quoted above references. It would be ironic and inequitable in the extreme if, by utilizing the precise format for the settlement of

[10] 25 U.S.C. §§ 5130, 5131 (the "List Act"). *See* ANC.Br. at 19.

[11] The point that ANCs have non-governmental features that make them less-preferred participants in some programs for which they are eligible has long been addressed through BIA's prioritization system. *See* 46 Fed. Reg. 27178 (1981) (ANCs "will be recognized" as the "governing body" of an Alaska Native village for purposes of the Self-Determination Act, subject to a specified "order of precedence" under which other tribal entities have higher priority but ANCs are eligible). *See also*, 1976 Soller Mem. App138 (similar).

Alaska Native land claims required by Congress in ANCSA, which included the formation of Native corporations with public interest responsibilities, Alaska Natives become ineligible for an emergency aid program for American Indians and Alaska Natives due to a post-CARES-enactment re-interpretation of proper organizational formats that rejects the interpretations reached by the expert federal agency (BIA) and relevant regional Court of Appeals (9th Circuit) that ANCs are eligible.

ANCSA provides that: "Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans." 43 U.S.C. § 1626(d). As Treasury and the ANCs describe in more detail, Congress passed ANCSA in 1971 to address the "immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. § 1601(a). In doing so, Congress diverged from previous approaches to American Indian policy in the Lower 48 States and sought to avoid creating "a reservation system or lengthy wardship or trusteeship." *See id*. § 1601(b); *see also Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 523-24 (1998). In exchange for the extinguishment of their aboriginal land claims, ANCSA authorized the placement of settlement lands into the hands of newly formed Native regional and village corporations on behalf of Alaska Natives. 43 U.S.C. §§ 1611, 1613. Congress

intended that the conveyance of these lands would ensure that Alaska Natives have the necessary means by which to provide for their own economic and social well-being, and to maintain their subsistence and cultural traditions. *See id*. § 1601(b) (settlement to be accomplished "in conformity with the real economic and social needs of Natives"); *id*. § 1606(r) (Native Corporations authorized "to provide benefits … to promote the health, education, or welfare of [its] shareholders"). Congress with little exception did not direct any settlement lands to Alaska Sovereign Tribes.

Congress instead intended that ANCs would use and develop these lands to benefit both their shareholders and all Alaska Natives. *See* ANC.Br. at 4-5 (reviewing ANCSA provisions). ANCs are expected to address the social and cultural needs of their Alaska Native shareholders in addition to providing an economic base. *Id*. Because Congress entrusted the land base and ANCSA settlement money to the ANCs, they play a vital and critical role in seeing to it that: "Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans." 43 U.S.C. § 1626(d).

Congress's decision to include ANCs in CARES by adopting the ISDEAA Indian Tribe definition, as discussed below, conforms with § 1626(d) by ensuring that Treasury is not forced to inadvertently shortchange Alaska in distributions on

account of the circumstance that so much of the Alaskan tribal infrastructure (and thus expenditures) is in ANC hands. *See also*, 42 U.S.C. § 801(d)(7) (CARES relief funding amounts to be "based on increased expenditures" post-Covid). That circumstances results from ANCSA itself. As noted above, Treasury's formula to distribute funding would make no sense in Alaska if it did not include employees and budgets of ANCs. Plaintiff Appellants overlook this point.

2. A Wide-Angle Review of Federal Statutes Defining "Indian Tribe" Shows a Pattern That Strongly Supports Defendant-Appellees' Reading.

ANCs have a mix of characteristics that make them appropriate participants in some, but not all, of the programs created by Federal Indian statutes. Statutory terms of art have been developed by which Congress uses a consistent pattern to make statute-by-statute choices in whether to include ANCs in the various programs it establishes. In using the ISDEAA definition in CARES, Congress knew exactly what it was doing and what the result would be.

a. Federal Statutes that Include ANCs in Their Definition of Indian Tribe.

Many Federal statutes, including ANCSA, makes ANCs eligible for Indian programs through legislative language, generally following the ISDEAA definitional format. The patterns emerge as one reads the statutes.

The Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") utilizes a definition of "federally recognized tribe" that is

grammatically similar to ISDEAA's "Indian Tribe definition. The NAHASDA definition includes within the housing program:

> any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act[.][12]

ANCs as the economic engines for Alaska Natives can be and are useful in promoting housing, and their exclusion would have undermined efforts to provide Alaska Natives with the same housing opportunities afforded Indians in the Lower 48 States. Also, the lands upon which Native housing settlements are generally built are usually owned by the ANCs. Congress enacted NAHASDA in 1996, well after BIA and the Ninth Circuit had interpreted the nearly identical 1975 ISDEAA Indian Tribe definition to include ANCs. The U.S. Department of Housing and Urban Development, the agency administering NAHASDA, interprets the statute to include ANCs in the program. *See, e.g.* 24 C.F.R. 1000.301 (block grant formula used to distribute funds), 1000.302(4) ("regional corporations," *i.e.* ANCs, included in block grant formula).

[12] 25 U.S.C. § 4103(13)(B). Note that the quoted definition referred to entities including ANCs as "federally-recognized tribes." The term "recognized" has many meanings.

The Community Development Banking and Financial Institutions Act of 1994 ("CDBRIA") defines "Indian Tribe" to include ANCs through language similar to ISDEAA. That 1994 Act defines "Indian Tribe" as:

> any Indian tribe, band, pueblo, 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 [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.[13]

The central purpose the CDBRIA was to create a fund to promote economic revitalization and community development by investing in and assisting community development financial institutions through equity investments, capital grants, loans and technical assistance support. The statute's purpose is economic relief, and ANCs are unsurprisingly included in the program. This is another statute that Congress adopted after the BIA and the Ninth Circuit interpretations. The Treasury Department certifies ANC participation in this program.[14]

Congress's understanding that adopting the ISDEAA definition makes ANCs eligible for a statutory program only hardened over time. As Treasury aptly notes, the Indian Tribal Energy Development Act ("ITEDA") of 2005 defines

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[13] 12 U.S.C. § 4702(12).

[14] *See*, Treasury's "List of Certified CDFIs" available at https://www.cdfifund.gov/programs-training/certification/cdfi/Pages/default.aspx (including entities owned by ANCs CIRI and Arctic Slope (Alaska Growth Capital)).

"Indian tribe" by adopting the ISDEAA definition. Treasury.Br. at 28 (citing 25 U.S.C. § 3501(4)(A)). Having thereby made ANCs Indian Tribes for the program, ITEDA's next sentence carves "Native Corporations" out of the Indian Tribe definition for a few of the ITEDA provisions, thereby leaving ANCs as Indian Tribes for the rest of the ITEDA provisions. *See id*. (citing 25 U.S.C. § 3501(4)(B)). The need to carve the exception shows that Congress understood the inclusionary effect of adopting the ISDEAA definition, which Congress did again in CARES, but this time without carving any exceptions. 42 U.S.C. § 801(g)(1).

There is no surprise in finding ANCs included in Federal Indian programs, particularly economic legislation. More specifically, Congress tends to include ANCs in legislation for the betterment of Indians and Native Alaskans that does not require that the tribal entity have sovereign powers, and that does not require ANCs to do something that would be contrary to the text or goals of ANCSA. The inclusion wording varies, and frequently ANCs are included through defining ANC lands to be Indian lands.[15] ANCSA directs that the Economic Development

[15] *See, e.g.*, Economic Opportunity Act, 42 U.S.C. § 2992c(3); *see* Pub. L. No. 93-644, § 11 (1975); National Housing Act, 12 U.S.C. § 1715z-13(i)(2); Public Land Corps Act of 1993, 16 U.S.C. § 1722(6)(D); Federal Cave Resources Protection Act of 1988, 16 U.S.C. § 4302(3)-(4); Archeological Resources Protection Act of 1979, 16 U.S.C. § 470bb(4)-(5); Elementary and Secondary Education Act, 20 U.S.C. § 7713(5)(A)(ii)(III); Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. § 3202(9); Energy Policy Act of 1992, 25 U.S.C.

Administration and other federal agencies conducting loan or loan and grant programs in Alaska include activity on ANC lands in these programs.[16]

b. Statutes that Exclude ANCs in the Definition of "Indian Tribe."

By contrast, legislation that excludes ANCs from program eligibility generally involves programs clearly tied to the sovereign powers and authorities of Tribes to manage tribal membership and tribal self-governance (*e.g.*, election matters), as opposed to providing services such as those found in CARES. In other cases, ANCSA itself defines characteristics of ANCs that make ANCs inappropriate service providers.

As an initial example, the Indian Child Welfare Act ("ICWA") defines an "Indian Tribe" in a way that includes Alaska Native **villages** but not village **corporations** or regional corporations, and so excludes ANCs from ICWA's child welfare program. That Act defines "Indian Tribe" as:

> any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43[.][17]

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§ 3501(2)(C); American Indian Agricultural Resource Management Act of 1993, 25 U.S.C. § 3703(10); Economic Recovery Tax Act of 1981, 26 U.S.C. § 168(j)(6); American Indian Vocational Rehabilitative Services Grants Act, 29 U.S.C. § 741(d);Veterans Home Loan Program Revitalization Act of 1992, 38 U.S.C. § 3765(1)(C); Native Americans Programs Act of 1974, 42 U.S.C. § 2991b(a).

[16] *See* 43 U.S.C. § 1601(g).

[17] 25 U.S.C. § 1903(8).

Note how this definition mostly parallels the ISDEAA definition adopted in CARES, but conspicuously diverges by not mentioning ANCs.

ICWA concerns placement preferences in child custody decisions where divorcing parents are not involved, which is a function clearly inappropriate for corporate ANCs, or for any corporation really. Sovereign Tribes are equipped to provide such services. Excluding ANCs from ICWA does not prevent Alaska Natives from receiving the statutory protections envisioned by the Act available to Indians in the Lower 48 States. *See* 43 U.S.C. § 1626(d).

The Native American Graves Protection and Repatriation Act defines "Indian tribe" similarly to ICWA, and so also excludes ANCs, through including Alaska Native villages but not village corporations or regional corporations:

> any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians[.][18]

Once more we have a definition of Indian Tribe that eerily parallels the definition in ISDEAA, but then conspicuously diverges to exclude ANCs by not mentioning them. There is a light switch that Congress turns on and off. Ensuring proper repatriation for human remains and sacred objects taken from Native graves is not

[18] 25 U.S.C. § 3001(7).

at all an economic activity and is far more appropriately led by the Alaska Sovereign Tribe (although ANCs can and do help).

As another example, the Indian Law Enforcement Reform Act concerns sovereign police/court activities unsuitable for ANCs as corporations.[19] This statute defines "Indian Tribe" as:

> any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government[.][20]

Here we have an example of Congress recognizing that police/courts activities are inherently sovereign in nature, and thus generally inappropriate for ANCs. Put another way, the ANCSA policy of providing to Alaska Natives the same services made available to Indians in the Lower 48 would not be advanced by attempting to turn corporations into police departments and courts. Similarly, statutory programs of any nature that have as a critical ingredient the sovereign immunity enjoyed by Sovereign Tribes or the inalienability of certain Indian lands (such as lands held in trust for Indians by DOI) are inappropriate for ANC participation given the decisions by Congress in ANCSA to form ANCs as corporations and allow them to alienate land. 43 U.S.C. §§ 1606, 1629e.

c. How the CARES Act Fits in this Statutory Pattern.

[19] 25 U.S.C. § 2801, *et seq.*
[20] 25 U.S.C. § 1301(1) (incorporated by reference in 25 U.S.C. § 2801(6)).

As general economic relief and health legislation, which does not require use of any sovereign powers such as police/court powers, the CARES Act tribal funding provisions group far more naturally with the list of statutes discussed including ANCs in their definitions of "Indian Tribe" than with the list of statutes excluding ANCs from their definitions. Sovereign immunity is not involved in any way in the CARES Act. The uses to which CARES Act funding may be put are not limited to the police or judicial or election or other "sovereign" functions for which ANCs are unsuited. Treasury must base distributions on "increased expenditures" post-Covid as compared to prior year budgets, which naturally includes tribal work on economic relief. *See* 42 U.S.C. § 801(c)(7) and (d). CARES Act Division A, which includes Title V, the Coronavirus Fund title in question, is entitled: "Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization." Pub. L. No. 116-136, Div. A. This is a function well-suited for ANCs as the land managers and general economic engine of Alaska Natives.

d. Textual Analysis of "Which Clause" at Issue Here.

To complete the analysis, one must also take a narrow-angle look at the specific text of the "which clause" in ISDEAA referenced in the CARES Act, and quoted above.

AFN as amicus offers one "narrow-angle" insight not covered by the parties' briefing: it is very helpful to read the statutory text from the perspective of both members of Congress familiar with the technical Federal Indian law terms as they have been interpreted over the years, and members of Congress who are unfamiliar with those terms of art, and read the terms by their ordinary meaning.

A member of Congress familiar with the interpretative history discussed above knew in voting for the CARES Act that referenced "Indian Tribe" definition in ISDEAA had been simultaneously construed by BIA in two ways. First, BIA construed the "which clause" narrowly so that only an Indian organization's formal "recognition" as a sovereign by DOI lets it satisfy the "which clause," meaning that ANCs do not that satisfy that clause. Soller Mem. App.138. Second, BIA held that the specific amendment adding ANCs to the list of types of groups that fall within the "Indian Tribe" definition signaled Congress's intent to not apply the general "which clause" qualifier at the end of that definition to ANC, meaning ANCs are Indian Tribes." *Id*. The Ninth Circuit affirmed these interpretations in *Bowen*. 810 F.2d at 1472-77.

From the perspective of members of Congress who know this interpretative history, the re-enactment canon (also known as the "prior construction canon") powerfully reinforces the canon against surplusage to support the conclusion that

ANCs are Indian Tribes.[21] "When administrative and 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 administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). The enactment of multiple other Federal Indian statutes that adopt the same or substantially the same "Indian Tribe" definition are a further indication of Congressional acceptance of the longstanding agency and judicial interpretation.[22]

Conversely, a member of Congress unfamiliar with the interpretive history and technical terms would presumably understand the term "recognized" in the "which clause" to have its ordinary meaning. The ordinary meaning of "recognized as eligible for programs and services" includes a situation in which a statute declares a non-sovereign organization to be eligible for Indian programs and services.[23] Multiple statutes do just that by declaring that ANCs or ANC

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[21] As has been thoroughly briefed, the canon against surplusage favors Secretary Mnuchin because it would be pointless for ANCs to be mentioned in the "Indian Tribe" definition if the "which clause" then disqualified all ANCs. If one were to accept Plaintiff-Appellants argument that ANCs were included in the past out of uncertainty, that could not be said of the situation today.

[22] Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 235 (2012) (noting prior construction canon applies to "related statutes," citing *Bragdon*).

[23] The words including ANCs in the Indian Tribe definition are very specific, while the subsidiary clause that Plaintiffs contend exclude ANCs (the "which

lands are eligible for various programs and services offered by the United States to Indians.[24] Thus, ANCs satisfy the "which clause" from the ordinary meaning perspective of a lay reader. In short, whether one applies BIA's technical term-of-art analysis, under which ANCs do not satisfy the "which clause," but are not subject to that clause, or an ordinary meaning analysis, ANCs are Indian Tribes as defined under Title V of the CARES Act. The diversity of analytical routes makes that conclusion robust.

By contrast, the Confederated Tribes Plaintiffs inconsistently apply a technical term-of-art analysis to one of the questions involved (whether ANCs satisfy the "which clause") and then switch gears and insist on their view of an ordinary meaning analysis to resolve the other question involved (whether the "which clause" applies to ANCs). That inconsistent approach does not work. Congress could not be both (1) aware of BIA's narrow technical interpretation of "recognized" in the "which clause," and (2) unaware of BIA's accompanying

---

clause") is more general, and is not specific in how it uses the key word "recognized." This weighs against reading the "which clause" as being highly restrictive. *See John Hancock Mut. Life Ins. Co. v. Harris Trust & Savings Bank*, 510 U.S. 86, 97 (1993).

[24] *E.g.*, 43 U.S.C. § 1601(g) (ANCs eligible for contracting programs); 16 U.S.C. § 1722z-13(6)(D) (ANC land eligible for Public Land Corps program); 42 U.S.C. § 2992c(3) (ANCs eligible for economic opportunity statute, as only ANCs selected lands under ANCSA); 25 U.S.C. § 3501(4)(A)-(B) (ANCs eligible for energy programs, with explicit carve-out of ANCs for limited parts of the program).

technical interpretation that the "which" clause does not apply to ANCs. BIA announced both technical interpretations in a single document (the Soller memorandum), which it has reaffirmed over the years, and the Ninth Circuit affirmed both interpretations in one opinion. If you know one, you know both. And, time and time again since, Congress has used the ISDEAA definition or similar language that includes the "which clause" to make ANCs eligible to participate in various federal programs for the ultimate benefit of Alaska Natives.

Finally, there is a third perspective to consider, that of a member of Congress who might be unfamiliar with the specific interpretative history of the "Indian Tribe" definition, yet determine to enact emergency legislation on an expeditious basis, through referencing off-the-shelf definitions found in pre-existing statutes. From that perspective, the point is to move quickly and avoid reinventing the wheel, whatever that wheel might be. The re-enactment canon is even more compelling from this perspective. By incorporating into emergency legislation definitions found in older statutes that have been interpreted over the years by agencies and courts, Congress expedites the provision of emergency relief. Incorporating definitions in pre-existing statutes, on the understanding that prior judicial and agency interpretation of those definitions will apply, minimizes litigation delays in the distribution of the emergency relief. A member of Congress doesn't have to know all the nuances of Federal Indian law to realize

that essential point. Emergency spending legislation is an unlikely vehicle to subtly overturn settled interpretations of the underlying substantive law.

B. Because ISDEAA Addresses ANCs in the Definition of "Indian Tribe" and ANCSA Vests Management of ANCs in Their Boards of Directors, ANCs Have "Recognized Governing Bodies."

A similar wide-angle approach that considers how ANCSA and other Federal Indian statutes deal with ANCs is also helpful in resolving the second issue in this case, raised by the UTE Tribe Plaintiffs, which is whether ANCs have "recognized governing bodies" as that phrase is used in the CARES Act to define "Tribal Government." 42 U.S.C. § 801(g)(5) ("'Tribal government' means the recognized governing body of an Indian tribe."). Treasury is correct that the phrase "recognized governing body" that appears in so many Indian statutes is simply employed to refer to whatever body is the lawful governing body of that Indian Tribe. Treasury.Br. at 42. In other Indian statutes, the wording is the same, but "recognized governing body" and the definition of "Indian Tribe" including ANCs appears in very close proximity, which visually provides the clue that Treasury is correct in reading these stock statutory phrases used in CARES.

Consider the Tribally-Controlled School Grant Act, where the definitions are:

> (4) Indian tribe
>
> The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, ***including an Alaska Native Village***

> ***Corporation or Regional Corporation*** (as defined in or established pursuant to the [ANCSA]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. …
>
> (7) Tribal governing body
>
> The term "tribal governing body" means, with respect to any school that receives assistance under this Act, ***the recognized governing body*** of the Indian tribe involved.[25]

One cannot read the adjoining definitions as allowing for the absurd possibility of a headless organization that meets the definition of Indian Tribe but has no "recognized governing body." As Treasury notes, ANCs have boards of directors, which ANCSA recognizes as their governing bodies. 43 U.S.C. § 1606(f) ("The management of a regional corporation shall be vested in a board of directors ….").

The next example is ISDEAA itself, 25 U.S.C. § 5301 *et seq.* That statute uses the same stock phrase "recognized governing body" in order to help define the term "tribal organization." *Id.* § 5304(l). A few definitions after including ANCs in the definition of "Indian Tribe," the statute defines "tribal organizations" in part as "the recognized governing body of ***any*** Indian tribe …." *Id.* (emphasis added). The juxtaposition of "recognized governing body" in close proximity to a definition of "Indian Tribe" printed above that includes ANCs leads to the conclusion that ANCs (like "any" entities meeting the "Indian Tribe" definition) have "recognized governing bodies." There is no discussion of what happens if an

[25] 25 U.S.C. § 2511 (emphasis added).

entity meeting the definition of "Indian Tribe" lacks a "recognized governing body," a discussion that would be sorely needed if Plaintiff-Appellants' narrow reading that only sovereigns are "recognized" was correct.

As an example of how Federal agencies have interpret these stock phrases, consider the Veteran Department's use of these terms:

> (u) Tribal government means the Federally 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 as defined in or established pursuant to 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.

38 C.F.R. 14.627; *see also* 38 C.F.R. 39.2 (similar). The proximity of ANCs and "recognized governing body" in this unified definition makes it even more apparent that ANCs must be able to have recognized governing bodies, which must be their boards of directors. Further, the use of the phrase "Federally recognized governing body" in immediate juxtaposition with ANCs strongly suggests that ANCSA's specification that the lawful leadership organization of an ANC is its board of directors is ample Federal "recognition." Note that the rule also defines "Tribal government" to include the governing body of an ANC. 38 C.F.R. 14.627(u). There is nothing novel in the CARES Act treating ANC boards as "Tribal Governments" for purposes of dispensing economic aid.

Now Congress can, if it wishes, utilize the same stock phrases differently in different Indian statutes, but it generally tries hard to avoid doing so, because of the confusion that would then result. Because Congress is unlikely to have used the stock phrase "recognized governing body" in a different sense in the CARES Act tribal relief provisions than in other Indian legislation, it follows that the "recognized governing body" of an ANC is its proper leadership, which ANCSA defines (and thus recognizes) is its board of directors. 43 U.S.C. § 1606(f).

III. CONCLUSION

The Court should affirm the District Court's judgment in favor of Defendant-Appellees Mnuchin and ANCs, and dissolve the injunction-pending appeal that is holding up delivery of critically needed Covid relief funding.

Dated: August 20, 2020

Respectfully submitted,

The Alaska Federation of Natives

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Dated: August 20, 2020

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Certificate of Service

On August 20, 2020, I filed the foregoing through the Court's Electronic Case Filing system, which will automatically serve on all counsel of record a link providing access to the filing and any attachments to the filing.

/s/ James H. Lister
James H. Lister

ADDENDUM TO BRIEF OF AMICUS CURIAE ALASKA FEDERATION OF NATIVES

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CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT
Pub. L. 116-136, Title V, 134 Stat 281 (Mar. 27, 2020), codified at 42 USC § 801
Public Law is quoted

SEC. 5001. CORONAVIRUS RELIEF FUND.

(a) IN GENERAL.—The Social Security Act (42 U.S.C. 301 et seq.) is amended by inserting after title V the following:

‘‘TITLE VI—CORONAVIRUS RELIEF FUND

‘‘SEC. 601. CORONAVIRUS RELIEF FUND.

‘‘(a) APPROPRIATION.—

‘‘(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for making payments to States, Tribal governments, and units of local government under this section, $150,000,000,000 for fiscal year 2020.

‘‘(2) RESERVATION OF FUNDS.—Of the amount appropriated under paragraph (1), the Secretary shall reserve—

‘‘(A) $3,000,000,000 of such amount for making payments to 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

‘‘(B) $8,000,000,000 of such amount for making payments to Tribal governments.

‘‘(b) AUTHORITY TO MAKE PAYMENTS.—

‘‘(1) IN GENERAL.—Subject to paragraph (2), not later than 30 days after the date of enactment of this section, the Secretary shall pay each State and Tribal government, and each unit of local government that meets the condition described in paragraph (2), the amount determined for the State, Tribal government, or unit of local government, for fiscal year 2020 under subsection (c).

….”

‘‘(c) PAYMENT AMOUNTS.—

‘‘(1) IN GENERAL.—Subject to paragraph (2), the amount paid under this section for fiscal year 2020 to a State that is 1 of the 50 States shall be the amount equal to the relative population proportion amount determined for the State under paragraph (3) for such fiscal year.

….”

‘‘(7) TRIBAL GOVERNMENTS.—From the amount set aside under subsection (a)(2)(B) for fiscal year 2020, the amount paid under this section for fiscal year 2020 to a Tribal government shall be the amount the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, that is based on increased expenditures of each such Tribal

government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity) and determined in such manner as the Secretary determines appropriate to ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments.

‘‘(8) DATA.—For purposes of this subsection, the population of States and units of local governments shall be determined based on the most recent year for which data are available from the Bureau of the Census.

‘‘(d) USE OF FUNDS.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

‘‘(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);

‘‘(2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and

‘‘(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

‘‘(e) CERTIFICATION.—In order to receive a payment under this section, a unit of local government shall provide the Secretary with a certification signed by the Chief Executive for the unit of local government that the local government’s proposed uses of the funds are consistent with subsection (d).

‘‘(f) INSPECTOR GENERAL OVERSIGHT; RECOUPMENT.—

‘‘(1) OVERSIGHT AUTHORITY.—The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section.

‘‘(2) RECOUPMENT.—If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.

….”

‘‘(g) DEFINITIONS.—In this section:

‘‘(1) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given that term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 5304(e)).

‘‘(2) LOCAL GOVERNMENT.—The term ‘unit of local government’ means 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.

‘‘(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

‘‘(4) STATE.—The term ‘State’ means 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.

‘‘(5) TRIBAL GOVERNMENT.—The term ‘Tribal government’ means the recognized governing body of an Indian Tribe.’’.

INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT OF 1975

Pub. L. 93-638, 88 Stat 2203 (1975), codified at 25 U.S.C. § 5301, et seq.

§ 5302: Congressional declaration of policy

(a) Recognition of obligation of United States. The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) Declaration of commitment. The Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, 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.

(c) Declaration of national goal. The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

§ 5304: Definitions

…

(d) “Indian” means a person who is a member of an Indian tribe;

(e) “Indian tribe” means 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) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

…

(l) "tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971

Pub. L. 92-203, 85 Stat. 688 (1971), codified at 43 U.S.C. § 1601 et seq.

§ 1601: Congressional findings and declaration of policy

Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this chapter shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State or [1] Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of December 18, 1971;

(d) no provision of this chapter shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this chapter shall effect a change or changes in the petroleum reserve policy reflected in sections 8721 through 8738 of title 10 except as specifically provided in this chapter;

(f) no provision of this chapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this chapter; and

(g) no provision of this chapter shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89–136, the Public Works and Economic Development Act of 1965, as amended [42 U.S.C. 3121 et seq.], shall be interpreted to include lands granted to Natives under this chapter as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

§ 1626: Relation to other programs

…

(c) Eligibility for need-based Federal programs. In determining the eligibility of a household, an individual Native, or a descendant of a Native (as defined in section 1602(r) of this title) to—

(1) participate in the supplemental nutrition assistance program,

(2) receive aid, assistance, or benefits, based on need, under the Social Security Act [42 U.S.C. 301 et seq.], or

(3) receive financial assistance or benefits, based on need, under any other Federal program or federally-assisted program, none of the following, received from a Native Corporation, shall be considered or taken into account as an asset or resource:

(A) cash (including cash dividends on stock received from a Native Corporation and on bonds received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;

(B) stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock) or bonds issued by a Native Corporation which bonds shall be subject to the protection of section 1606(h) of this title until voluntarily and expressly sold or pledged by the shareholder subsequent to the date of distribution;

(C) a partnership interest;

(D) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(E) an interest in a settlement trust.

(d) Federal Indian programs. Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans.

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF -DETERMINATION ACT (NAHASDA)

Pub. L. 104–330, 110 Stat. 4016 (1996), codified at 25 U.S.C. § 4101, et seq.

§ 4101: Congressional Findings

The Congress finds that—

(1) the Federal Government has a responsibility to promote the general welfare of the Nation—

(A) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status;

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government shall work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities shall be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93–638 (25 U.S.C. 450 et seq.).[1]

§ 4103: Definitions

…

(10) Indian. The term “Indian” means any person who is a member of an Indian tribe.

(11) Indian area. The term “Indian area” means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this chapter for affordable housing.

(12) Indian housing plan. The term “Indian housing plan” means a plan under section 4112 of this title.

(13) Indian tribe.

(A) In general. The term “Indian tribe” means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) Federally recognized tribe. The term “federally recognized tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).[1]

(C) State recognized tribe

(i) In general. The term “State recognized tribe” means any tribe, band, nation, pueblo, village, or community—

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date.

(ii) Conditions. Notwithstanding clause (i)—

(I) the allocation formula under section 4152 of this title shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on October 26, 1996; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS ACT
Pub. L. 103-325, Title I, Subtitle A, 108 Stat. 2163 (1994), codified at 12 U.S.C. § 4701, et seq.

§ 4701: Findings and Purpose

…

(b) Purpose. The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

§ 4702: Definitions

…

(11) Indian reservation

The term "Indian reservation" has the same meaning as in section 1903(10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

(12) Indian tribe

The term "Indian tribe" means any Indian tribe, band, pueblo, 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 [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

INDIAN TRIBAL ENERGY DEVELOPMENT ACT

Pub. L. No. 109–58, Title XXVI, 119 Stat 594 (2005), codified at 25 USC § 3501, et seq.

§ 3501 Definitions

…

(4)(A) The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(B) For the purpose of paragraph (12) and sections 3503(b)(1)(C) and 3504 of this title, the term "Indian tribe" does not include any Native Corporation.

…

§ 3502. Indian tribal energy resource development

(a) Department of the Interior program

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy development organizations in achieving the purposes of this chapter….

INDIAN CHILD WELFARE ACT

Pub. L. 95-608, 92 Stat. 3069 (1978), codified at 25 U.S.C. § 1901, et seq.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903: Definitions

…

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of title 43;

…

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

…

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

NATIVE AMERICAN GRAVES PROTECTION AND REPRIATION ACT
Pub. L. 101–601, 104 Stat 3048 (1990), codified at 25 U.S.C. § 3001, et seq.

§ 3001: Definitions

…

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.]

…

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

…

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

INDIAN LAW ENFORCEMENT REFORM ACT
Pub. L. 101-379, 104 Stat. 473 (1990), codified at 25 U.S.C. § 2801, et seq.

§ 2801: Definitions

…

(6) The term "Indian tribe" has the meaning given that term in section 1301 of this title.

RIGHTS OF INDIANS
Pub. L. 90-284, Title II, 82 Stat. 77 (1968), codified at 25 U.S.C. § 1301

§ 1301: Definitions

For purposes of this subchapter, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent

power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) "Indian court" means any Indian tribal court or court of Indian offense; and

(4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

TRIBALLY-CONTROLLED SCHOOL GRANT ACT

Pub. L. 100–297, 102 Stat 130 (1988), codified at 25 U.S.C. § 2501

§ 2501: Declaration of Policy

…

(c) National goal. Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children--

(1) to compete and excel in areas of their choice; and

(2) to achieve the measure of self-determination essential to their social and economic well-being

§ 2511: Definitions

…

(3) Indian

The term "Indian" means a member of an Indian tribe, and includes individuals who are eligible for membership in a tribe, and the child or grandchild of such an individual.

(4) Indian tribe

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Village Corporation or Regional Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

…

(7) Tribal governing body

The term "tribal governing body" means, with respect to any school that receives assistance under this Act, the recognized governing body of the Indian tribe involved.

(8) Tribal organization

(A) In general. The term “tribal organization” means—

(i) the recognized governing body of any Indian tribe; or

(ii) any legally established organization of Indians that—

(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization; and

(II) includes the maximum participation of Indians in all phases of the organization’s activities.

REPRESENTATION OF DEPARTMENT OF VETERANS AFFAIRS CLAIMANTS

38 C.F.R. § 14.626, et seq.

§ 14.626 Purpose.

The purpose of the regulation of representatives, agents, attorneys, and other individuals is to ensure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

§ 14.627 Definitions.

…

(u) Tribal government means the Federally 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 as defined in or established pursuant to 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.