Nos. 20-543, 20-544

In the Supreme Court of the United States

JANET L. YELLEN, SECRETARY OF THE TREASURY,
PETITIONER,

v.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION,
ET AL.

ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, INC.
ET AL., PETITIONERS,

v.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION,
ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR COOK INLET REGION, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Cook Inlet Region, Inc. (CIRI) is one of twelve regional Alaska Native corporations (ANCs) created by the Alaska Native Claims Settlement Act. As the regional ANC for southcentral Alaska—including the Municipality of Anchorage and the Matanuska-Susitna Borough, two of Alaska's most heavily populated areas—CIRI currently has more than 9,100 shareholders. Along with its designated tribal organizations, CIRI delivers vital health, social, and housing services to approximately 60,000 Alaska Natives and American Indians.

Although there are several federally recognized tribes scattered throughout the geographic boundaries of the CIRI region, the vast majority of Alaska Natives and American Indians in the region reside in heavily populated areas beyond the authority of those tribes. See Order, *Cook Inlet Treaty Tribes* v. *Shalala*, No. 94-cv-589 (D. Alaska Jan. 6, 1997) (attached as Addendum), Add. at 14a-15a, *appeal dismissed as moot*, 166 F.3d 986 (9th Cir. 1999). The Municipality of Anchorage is, for the most part, "an area populated by thousands of Alaska Natives who in effect live in an unorganized Native village—one without any Native governing body." *Id.* at 26a-27a. As a result, only a fraction of the Alaska Natives and American Indians living in the CIRI region receive services directly from federally recognized tribes; for the vast majority, CIRI must serve that function instead.

Over the past year, CIRI and its designated tribal organizations have played a critical role in responding to the challenges that the COVID-19 pandemic has posed for

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[1] Pursuant to Rule 37.6 of the Rules of this Court, no counsel for a party wrote this brief in whole or in part, and no one other than amicus curiae or its counsel contributed money to fund the preparation or submission of this brief. Counsel for all parties have consented to the filing of this brief.

Alaska's Native population. Southcentral Foundation has already vaccinated 18,745 people in the Municipality of Anchorage and Matanuska-Susitna Borough, and has delivered 25,000 meals to the homes of Native elders. Cook Inlet Tribal Council launched a $100,000 Participant Emergency Fund to provide essential support such as food, housing, and transportation to vulnerable community members, and has expanded its employment assistance and job referral services. It has also, in partnership with Cook Inlet Housing Authority, provided more than $500,000 in assistance for rent, mortgage, emergency housing, utilities, internet, food, and winter clothing—benefits for which more than 1,000 have applied. See Letter to Partners from Gloria O'Neill, President & CEO, Cook Inlet Tribal Council, Inc., https://bit.ly/3skyyP8. And Cook Inlet Housing Authority has partnered with the Municipality of Anchorage and the Alaska Housing Finance Corporation to provide emergency rental and utility assistance. See Mayor's Office, *Municipality of Anchorage, Cook Inlet Housing Authority partner with Alaska Housing to distribute up to 12 months of rent assistance*, Municipality of Anchorage (Feb. 8, 2021), https://bit.ly/2ZNyHym.

CIRI therefore has a critical interest in obtaining its share of the emergency relief funds Congress appropriated in Title V of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020). Congress reserved $8 billion for Indian tribes to fund desperately needed services in response to the COVID-19 pandemic—exactly the kind of services that CIRI, through its designated tribal organizations, provides. If ANCs are excluded, Alaska Natives and American Indians living in the CIRI region may not receive some or all of the services that CIRI would be able to provide with the benefit of Title V funds.

As the world enters the second year of the worst public health and economic crisis in generations—a crisis that has been particularly devastating for impoverished Native communities—that result on its own would be cause for concern. But if affirmed, the ruling below would reverberate far beyond ANCs' eligibility for CARES Act relief. The linchpin of the D.C. Circuit's decision was its conclusion that "ANCs are eligible for Title V funding only if they qualify as an 'Indian tribe' under [the Indian Self-Determination and Education Assistance Act (ISDEAA)]," and that "ANCs do not satisfy the [ISDEAA] definition." U.S. Pet. App. 11a. That erroneous conclusion threatens to destabilize the entire tribal health and social-services system in Alaska, which for decades has functioned on the principle that ANCs *do* qualify.

Since the 1980s, CIRI and other ANCs have delegated their authority under ISDEAA to designated tribal organizations, authorizing them to enter into self-determination contracts—and, in CIRI's case, a self-governance compact—with the federal government. These delegations are based on the settled understanding of Congress, the Executive Branch, and the courts that ANCs qualify as Indian tribes for statutory purposes. Pursuant to such agreements, CIRI today provides a panoply of governmental services to 60,000 Alaska Natives and American Indians in southcentral Alaska, consistent with Congress's intent to ensure that programs implementing the federal trust responsibility to Native peoples reach all intended beneficiaries in the State. The decision below could place these programs and services in jeopardy; it threatens devastating consequences for a substantial proportion of Alaska's Native population.

CIRI respectfully submits that its own experience powerfully illustrates how Congress, the Executive Branch, and the courts have long recognized ANCs as partners in the many programs and services that

Congress enacted to protect and enhance the socioeconomic well-being, education, health, and cultural heritage of Native people. In administering those programs and services on behalf of the federal government, ANCs and their designated tribal organizations serve as conduits through which the government fulfills its trust responsibilities to Alaska's Native population. The CARES Act is just the latest important example of Congress enlisting the assistance of ANCs to serve that function.

SUMMARY OF THE ARGUMENT

For decades, CIRI has played an indispensable role in delivering essential programs and services under an array of federal statutes to 60,000 Alaska Natives and American Indians who reside in its region, which includes the densely populated Municipality of Anchorage and Matanuska-Susitna Borough. The vast majority of that Native population lives in areas for which there is no federally recognized tribal government and no Alaska Native village corporation land. CIRI has been recognized for decades as the exclusive source of ISDEAA services and programs for much of that population. CIRI thus embodies the purposes for which ANCs were created: to encourage the self-determination and autonomy of Alaska Natives, as well as to promote their health, education, and welfare. But CIRI also fulfills ISDEAA's related goal of enabling Indian communities—including Alaska Native communities—to control and administer the programs and services that the federal government provides to Indians in the manner most suited to their communities' needs.

Over the nearly half-century since ISDEAA's enactment, ANCs like CIRI have, through their tribal organizations, stepped into the federal government's shoes to administer federal programs to Alaska's Native population. Today, 99% of Alaska's tribal health services are managed by tribal entities; a large share is administered

by CIRI and its designated tribal organizations, which have greatly expanded and improved upon the services that the federal government previously provided.

A ruling that CIRI is not an "Indian tribe" under ISDEAA would imperil CIRI's ability to provide the services on which so many Alaska Natives and American Indians in the Municipality of Anchorage and the Matanuska-Susitna Borough rely. For most services, no other tribal entity is eligible to assume the role that CIRI and its tribal organizations have been playing for decades. While there are several federally recognized tribes in the region that provide certain ISDEAA services within their tribal authority, those services are necessarily limited in range and scope. As the courts have recognized, the authority of these tribes does not extend to the areas in the CIRI region where most Alaska Natives live. This is the void that CIRI and its designated tribal organizations fill.

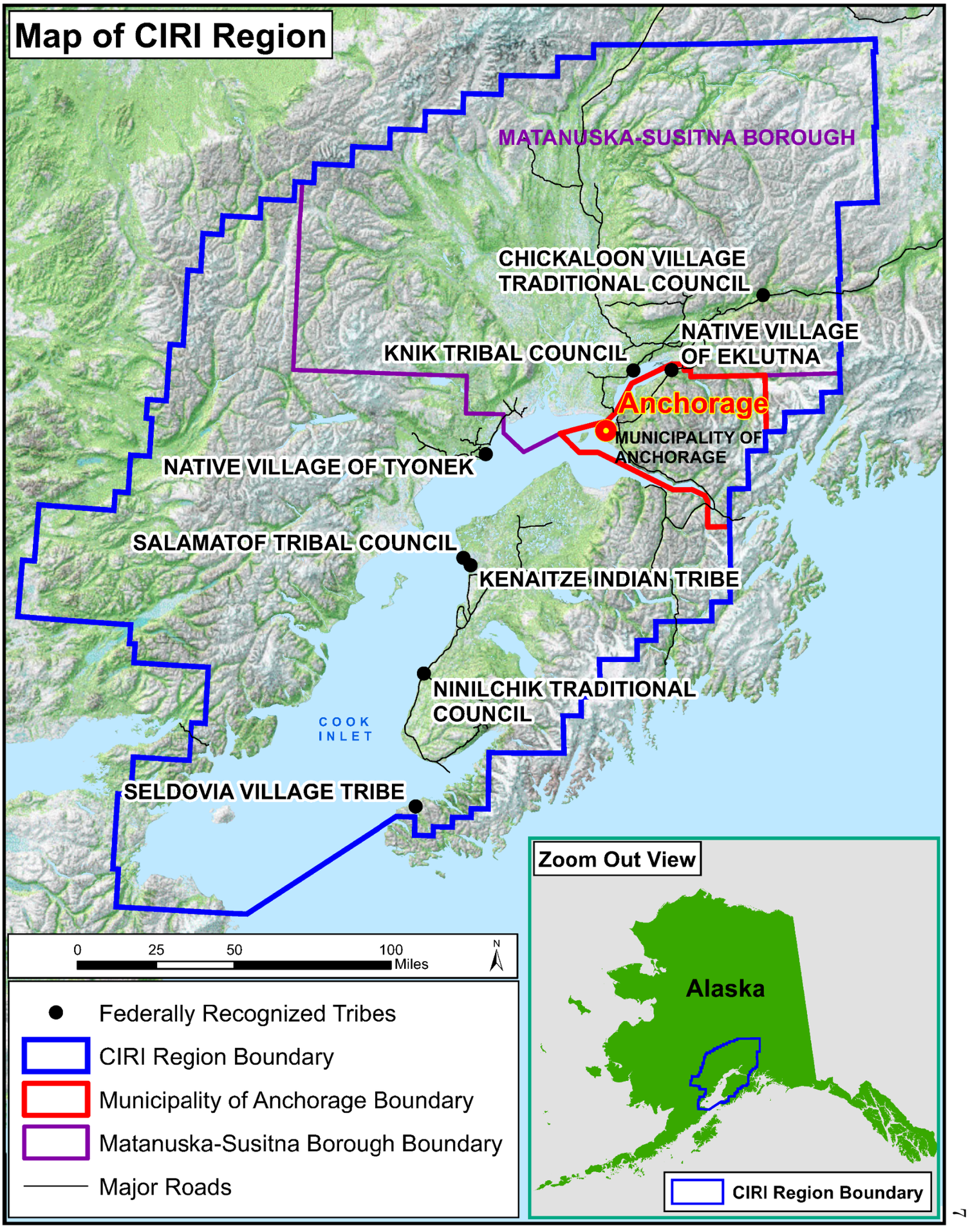
In any event, none of the federally recognized tribes are eligible for the ISDEAA funding that would be necessary to suddenly assume responsibility for providing health and other services to the population that CIRI has historically served. In fiscal year 2020, the three federally recognized tribes located within the Municipality of Anchorage and the Matanuska-Susitna Borough received funding from the Indian Health Service that was a mere 0.3% of the amount that CIRI received, and CIRI's funds cannot simply be reallocated. Nor is the federal government equipped to assume these responsibilities, having functionally been absent from this sphere since the 1980s: The Indian Health Service presently has *no* healthcare providers in Alaska; its Area Office employs only administrative staff.

It is therefore unsurprising that the Executive Branch has *never* interpreted ISDEAA to exclude CIRI and other ANCs from the definition of "Indian tribe," as

the court below did. On the contrary, multiple cabinet departments of the Executive Branch have understood for decades Alaska's unique circumstances and the important gap-filling role that CIRI and other ANCs play in the administration of federal Indian programs and services for the benefit of Alaska Natives.

The federal government's longstanding reliance on the assistance of CIRI and other ANCs in administering numerous federal Indian programs and services in Alaska demonstrates that ANCs easily satisfy the Eligibility Clause: They are (1) "eligible for the special programs and services provided by the United States to Indians," and they are (2) "recognized" as such. 25 U.S.C. § 5304(e).

That conclusion is further confirmed by Congress's enactment in 1997 of Public Law No. 105-83, which addressed the management of certain statewide tribal health facilities. Section 325(d) of that law reconfirmed Congress's understanding that CIRI—and ANCs more generally—are Indian tribes for purposes of ISDEAA. The law provided that CIRI was not required to seek "any further authorizing resolutions" from other tribes or ANCs before it could provide certain services to members of those other tribes and ANCs pursuant to its existing Compact and Funding agreement. Congress's waiver of the authorizing-resolution requirement thus presupposed that CIRI and other ANCs were Indian tribes under ISDEAA in the first place.


Map of CIRI Region
MATANUSKA-SUSITNA BOROUGH
CHICKALOON VILLAGE TRADITIONAL COUNCIL
NATIVE VILLAGE OF EKLUTNA
KNIK TRIBAL COUNCIL
Anchorage
MUNICIPALITY OF ANCHORAGE
NATIVE VILLAGE OF TYONEK
SALAMATOF TRIBAL COUNCIL
KENAITZE INDIAN TRIBE
NINILCHIK TRADITIONAL COUNCIL
COOK INLET
SELDOVIA VILLAGE TRIBE
0 25 50 100 Miles
N
Federally Recognized Tribes
CIRI Region Boundary
Municipality of Anchorage Boundary
Matanuska-Susitna Borough Boundary
Major Roads
Zoom Out View
Alaska
CIRI Region Boundary

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ARGUMENT

I. CIRI's role in providing services to the region's Alaska Natives and American Indians is unique and irreplaceable

The CIRI region covers a vast swath of southcentral Alaska around Cook Inlet, which stretches 180 miles from the Gulf of Alaska to Anchorage. The region includes the Municipality of Anchorage and the Matanuska-Susitna Borough, which contain approximately 460,000 residents, or more than 60% of the State's entire population. A substantial proportion of this population—roughly 60,000 people—are Alaska Native or American Indian who receive services from CIRI.

There are eight federally recognized tribes within the CIRI region.[2] These tribes receive federal funding to deliver certain services to their members and to other Alaska Natives and American Indians within their tribal authority. But their reach is necessarily limited: In fiscal year 2019, the eight tribes *together* provided healthcare services to fewer than 6,000 people—less than 10% of the region's Native population.

For the remaining tens of thousands of Alaska Natives and American Indians who reside in communities in the region but outside the authority of these tribes, CIRI plays an indispensable and exclusive role. Consistent with the purposes for which Congress established ANCs—and the statutes enacted to carry out the federal government's constitutional responsibilities toward Indians—CIRI provides essential programs and services necessary to

[2] These tribes are Chickaloon Village Traditional Council (previously known as the Chickaloon Native Village), Native Village of Eklutna, Kenaitze Indian Tribe, Knik Tribal Council, Ninilchik Traditional Council, Salamatof Tribal Council, Seldovia Village Tribe, and Native Village of Tyonek.

promote the health, welfare, and cultural identity of the region's Native population.

A. ANCs were created by ANCSA to serve an Indian law purpose and to provide programs and services to Alaska Natives and American Indians

ANCs are not (and do not claim to be) sovereign Indian tribes; but neither are they merely state-chartered, for-profit private corporations. ANCs are instead creatures of the Alaska Native Claims Settlement Act of 1971 (ANCSA), a statute enacted "pursuant to [Congress's] plenary authority under the Constitution of the United States to regulate Indian affairs." 43 U.S.C. § 1601 note. To resolve pending aboriginal land claims, Congress agreed to convey lands and settlement funds to Alaska Natives. But rather than rely on the traditional reservation system—which was a poor fit for Alaska's unique tribal history and vast geography—Congress and the State's Natives agreed to a different model: They conceived ANCs and empowered them to serve as stewards of the settlement lands and funds for the benefit of the Native communities.

1. At the time of ANCSA's enactment in 1971, Indian policy in the Lower 48 was widely viewed as falling short of its goals. The approach followed there had unduly restricted Indians' geographic and socioeconomic mobility. See generally 1 F. Cohen, *Handbook of Federal Indian Law* § 1.07 (2012). Mindful of those concerns, ANCSA's principal drafter explained that Congress "rejected the paternalism of the past and gave Alaska Natives an innovative way to retain their land and culture without forcing them into a failed reservation system." *John* v. *Baker*, 982 P.2d 738, 753 (Alaska 1999) (quoting Sen. Stevens). Congress accordingly sought to create a new model—one specially designed to operate "in conformity with the real

economic and social needs of [Alaska] Natives." 43 U.S.C. § 1601(b).

The statute's main innovation was the ANC, a *sui generis* entity tailor-made for Alaska's Native communities. Congress directed the Secretary of the Interior to divide the State into twelve geographic regions, each "composed as far as practicable of Natives having a common heritage and sharing common interests." *Id.* § 1606(a). Each region formed a corporation, with articles of incorporation reviewed by the Secretary to avoid any "inequities among Native individuals or groups of Native individuals." *Id.* § 1606(e). ANCs were then authorized to issue stock to their shareholders, all of whom were Alaska Natives. *Id.* § 1606(g)(1).

From the beginning, all ANCs have been controlled by their Native shareholders. Although ANC stock can be inherited by non-Natives, Congress took steps to ensure continued Native control, including by nullifying the voting rights of shares inherited by non-Natives. *Id.* § 1606(h)(1)(B)-(C), (2)(C)(ii), (3)(D)(i). Congress was also clear that majority-Native ownership conferred a distinct Indian law status: It specified that, "[*f*]*or all purposes of Federal law*, [such] a Native Corporation shall be considered to be a corporation owned and controlled by Natives." *Id.* § 1626(e)(1) (emphasis added). Every ANC currently qualifies and has always qualified as Native-owned and controlled.

2. Particularly important for present purposes, Congress also formalized the connection between ANCs and the Native communities they were created to serve. It directed the Secretary to enroll every eligible Alaska Native into one of the twelve regional ANCs, irrespective of tribal enrollment. *Id.* § 1604(b); see *id.* § 1602(b) (defining "Native" by reference to minimum blood quantum *or* membership in a Native village or group). Conversely,

Congress did *not* require Alaska Natives to enroll in a federally recognized tribe, even though many such tribes existed in Alaska at the time.

The failure to require Native enrollment in federally recognized tribes as the central mechanism for the settlement statute was no mere oversight: It reflected Congress's desire to promote Native self-determination and autonomy. See 43 U.S.C. § 1601(b) (expressing intent to settle land claims "with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] *without creating a reservation system or lengthy wardship or trusteeship*") (emphasis added). For similar reasons, Native-controlled ANCs would own settlement lands, replacing the traditional model in which the federal government holds Indian lands in trust. Cf. 25 U.S.C. § 5108.

ANCs were also intended to serve a central role in carrying out the government's commitment to the health and welfare of Alaska Natives, by "perform[ing] … social welfare functions of regional benefit." H.R. Rep. No. 92-746, at 42 (1971). As it did with tribal land holdings, Congress again chose to deviate from the Indian policy applicable to the Lower 48 in favor of a more flexible (and regional) approach. State-chartered village corporations—another ANCSA innovation—were invested with responsibility to act "for and on behalf of a Native" tribe in respect to certain "rights and assets." 43 U.S.C. § 1602(j). And regional ANCs were given responsibility to "promote the health, education, [and] welfare" of Natives in their region. *Id.* §1606(r).

But crucially, nothing in ANCSA was intended to impede the continued provision of federal Indian programs and services to Alaska Natives. To the contrary, Congress directed that "Alaska Natives shall *remain eligible*

for all Federal Indian programs *on the same basis* as other Native Americans." *Id.* § 1626(d) (emphasis added); see *id.* § 1626(a) (ANCSA does not "substitute for any governmental programs otherwise available to the Native people of Alaska"). Congress thus chose an innovative approach for honoring its commitment to the State's Native population, an approach in which both federally recognized tribes and Alaska Native corporations play a shared role. In the years since ANCSA's enactment, ANCs have worked to fulfill that promise—building capacity and investing in the infrastructure necessary to become primary service providers—precisely as Congress intended them to do.

B. Under ISDEAA, Congress has transferred to CIRI its responsibility to care for Alaska Natives

Among the most significant of federal Indian programs is the Indian Self-Determination and Education Assistance Act. Congress enacted ISDEAA to give Native communities autonomy over the conduct and administration of services designed for their own benefit. For decades, CIRI and its tribal organizations have assumed that responsibility: They provide comprehensive health and social services to 60,000 Alaska Natives and American Indians in the region, leaving no doubt that CIRI is an Indian tribe for purposes of the ISDEAA definition. The Ninth Circuit agreed in *Cook Inlet Native Ass'n* v. *Bowen*, 810 F.2d 1471 (9th Cir. 1987), and CIRI and its designated tribal organizations have built a comprehensive health and social-services system in reliance on the court's conclusion that CIRI is "a tribe under the Self-Determination Act." *Id.* at 1476. More importantly, 60,000 of the Alaska Natives living in the CIRI region depend on the vital ISDEAA services provided by CIRI in accordance with *Bowen*.

Several plaintiffs in this litigation also agree—or at least they used to agree. One plaintiff group told the district court that ANCs like CIRI *can* qualify as "Indian tribes" under ISDEAA. See Cheyenne River Pls. MSJ Mem., Dist. Ct. Dkt. 76-2, at 13 ("ANCs may be treated as a tribe under ISDEAA … for limited purposes") (formatting altered). And another plaintiff group conceded that CIRI in particular qualifies as an ISDEAA tribe. See Confederated Tribes MSJ Mem., Dist. Ct. Dkt. 77, at 36 (CIRI operates under circumstances where "the agency may allow the regional ANC to act akin to an Indian tribe for purposes of ISDEAA"). These plaintiffs were right.

1. Congress's enactment of ISDEAA in 1975 reaffirmed the federal government's "unique and continuing relationship with and responsibility to the Indian people." 25 U.S.C. § 5302(b). The law adopted a new model of partnering with Indian tribes to carry out those responsibilities: By entering into a self-determination contract, an Indian tribe could *directly* provide services that the federal government would otherwise provide. *Id.* § 5321(a). Congress later amended the statute to allow for self-governance *compacts*, known as Title V compacts, which allow certain ISDEAA tribes to assume full funding and control over programs and services and tailor them to suit their particular needs. *Id.* § 5385(b)(1). It thus facilitates 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 federal services and programs. *Id.* § 5302(b); see *Menominee Indian Tribes of Wis.* v. *United States*, 136 S. Ct. 750, 753 (2016).

Congress wrote the law with Alaska's Native population specifically in mind. Before ISDEAA, "Alaska Natives were found to be among the most disadvantaged people in the nation." David S. Case & David A. Voluck, *Alaska Natives and American Laws* 221 (3d ed. 2012). A

key report noted that "[t]hree out of eight Native families are below the official poverty line … . Poverty among Alaska Natives is four times as prevalent as in the U.S. population, and more than eight times as prevalent as among Alaska non-Natives." *Ibid.* Improving the quality of services to Alaska's Native community was among ISDEAA's top priorities.

Congress thus defined "Indian tribe" so as to expressly include ANCs, the unique governance structure that ANCSA had created:

> 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.

25 U.S.C. § 5304(e) (emphasis added). The underlined clause was inserted during the drafting process to remove any doubt that Congress meant "to include [the] regional and village corporations established by the Alaska Native Claims Settlement Act." H.R. Rep. No. 93-1600 (1974).

2. ISDEAA permitted an "Indian tribe," when contracting with the federal government to administer federal programs, to delegate its authority to designated tribal organizations. 25 U.S.C. § 5321(a). Thus, in the wake of the law's enactment, CIRI quickly began to designate tribal organizations—each supervised by board members appointed by CIRI, all of whom are Alaska Natives—and to delegate authority to them. Precisely as the statute contemplated, CIRI and its tribal organizations stepped into the federal government's shoes to administer federal services and programs to Alaska Natives in its region. Today, approximately 99% of the State's tribal

health services are directly managed by ISDEAA Indian tribes and tribal organizations. See *Alaska Area*, Indian Health Serv., https://bit.ly/37Xskgp.

Indeed, for nearly five decades, through ISDEAA contracts and compacts—as well as under other statutes that rely on the ISDEAA definition of "Indian tribe" (or a similarly worded definition)—CIRI and its designated tribal organizations have substantially expanded and improved upon the services that previously had been provided by the federal government to the region's Alaska Natives and American Indians.

Southcentral Foundation. In 1982, CIRI designated Southcentral Foundation as its tribal organization dedicated to providing health services for Alaska Natives and American Indians within the Municipality of Anchorage and the Matanuska-Susitna Borough. Acting under CIRI's delegated tribal authority, Southcentral Foundation has entered into numerous ISDEAA self-determination contracts with the Indian Health Service.

In 1995, after Congress amended ISDEAA to allow for self-governance compacts, *CIRI became the first—and to date, the only—ANC to enter into a Title V compact with the Executive Branch*: Along with more than a dozen other Alaska Native tribal entities, Southcentral Foundation signed the Alaska Tribal Health Compact. Under the Compact, Southcentral Foundation negotiates annual funding agreements with the Indian Health Service. In 1999, Southcentral Foundation assumed co-management of the Alaska Native Medical Center, a 168-bed community and tertiary care hospital in Anchorage, which the Service had previously managed.

As a Title V compactor, Southcentral Foundation has dramatically increased the scope of and access to healthcare in the CIRI region. In fiscal year 2020, Southcentral Foundation received $144,228,747 in annual

ISDEAA funding from the Department of Health and Human Services (Annual ISDEAA health funds) to provide vital medical, dental, and behavioral health services. Today, Southcentral Foundation's 2,500 employees deliver comprehensive healthcare to approximately 60,000 Alaska Natives and American Indians in 30 health clinics and facilities across the CIRI region (an increase from just five clinics in 1999). This includes a broad range of services that were *not* previously provided by the Indian Health Service, including: same-day primary care, pediatric neuro development, occupational therapy, pediatric and adult orthodontia, adult restorative dental, residential medical detoxification, children's residential behavioral health, outpatient behavioral health, and outpatient substance abuse treatment. Notably, nearly all of these services are provided not only in the Municipality of Anchorage, but also in the Matanuska-Susitna Borough, where no federally recognized tribe or tribal organization had previously provided ISDEAA health services.

Cook Inlet Tribal Council (CITC). CIRI established CITC in 1983 and designated it to provide a broad array of social services pursuant to ISDEAA contracts with the Indian Health Service and the Bureau of Indian Affairs. Of particular note, CITC is governed by a board that includes representatives from both CIRI and the eight federally recognized tribes in its region. CITC's services include child and family services, educational and cultural programs, job placement and training, workforce development, child care, substance abuse services, and welfare assistance. CITC and its family of organizations, including the Alaska Native Justice Center and Early Head Start, offer services to Alaska Natives and American Indians across the region, typically serving more than 20,000 annually.

CITC built on limited pre-existing federal services and now provides some of the most comprehensive social

services to Alaska Natives and American Indians in the State. These wraparound, cradle-to-grave services include: Early Head Start child care; cash assistance; comprehensive child welfare intervention and prevention; victim and survivor services; offender reentry services; an extensive continuum of recovery services, from assessment and intervention to long-term residential treatment and transitional-living programs; and a unique partnership with the Anchorage school system to increase STEM capacity.

In 1996, Congress expressly included CITC (and other tribal organizations affiliated with regional ANCs) as tribal grant recipients under the Temporary Assistance for Needy Families (TANF) program—a federal grant program that enables states and tribal governments to provide cash assistance and other services for needy families with children. 42 U.S.C. § 612; see *id.* § 619(4)(B) (including "Alaska Native regional nonprofit corporations"). CITC is the *sole* provider of tribal TANF in the Anchorage area, and has provided assistance to thousands of individuals under that program. See *Native American and Alaska Natives Issues: Hearing before the H. Subcomm. on Interior, Env't, and Related Agencies*, 113th Cong. (2013) (statement of Amy Fredeen, Executive Vice President & Chief Financial Officer, CITC), https://bit.ly/3prauIF.

Cook Inlet Housing Authority (CIHA). As CIRI's authorized tribally designated housing entity under the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA), 25 U.S.C. §§ 4101 *et seq.*, CIHA provides housing-related services to eligible Alaska Natives and American Indians residing in the region. These services include the development and operation of affordable rental housing, payment assistance, housing rehabilitation and weatherization, neighborhood

revitalization, homeownership assistance, and resident-enrichment services and financial education.

Under NAHASDA, Congress authorized block grants for housing assistance to "Indian tribes," which it defined by reference to ISDEAA's definition, *id.* § 4103(13)(B). The Executive Branch has long recognized ANCs, including CIRI, as eligible recipients of these block grant funds. CIHA's services are available to all eligible Alaska Natives and American Indians residing in the CIRI region. During the year ending July 2020, more than 90% of those served by CIHA were non-CIRI shareholders.

C. Loss of CIRI's status under ISDEAA could threaten services for more than 40% of Alaska's Natives

The decision below threatens CIRI's provision of essential services—including through Southcentral Foundation, CITC, and CIHA—to 60,000 Alaska Natives and American Indians who reside within the region. These services are delivered in areas that lie *outside* the authority of any federally recognized tribe, meaning that there is no other "Indian tribe" eligible to contract or compact for such services, as required by ISDEAA. A ruling that CIRI is not an "Indian tribe" for statutory purposes would thus leave a massive void that no other tribal entity could fill. That would strike a serious blow to Native communities that have made substantial progress since ISDEAA's enactment but still have far lower incomes and higher rates of poverty than the general population. See *Health Indicator Report of Poverty*, Alaska Dep't of Health & Soc. Servs. (Feb. 27, 2019), https://bit.ly/3ksIKSY.

As one court recognized decades ago, "the Municipality of Anchorage (excluding Eklutna) is an area populated by thousands of Alaska Natives who in effect live in an unorganized Native village—one without any Native governing body." *Cook Inlet Treaty Tribes*, Add. at 26a-27a. None of the federally recognized tribes in the CIRI region

is "an Indian Reorganization Act council for Anchorage, none provide[s] governmental functions within the Municipality of Anchorage, excluding Eklutna," and there is no ANCSA "village profit corporation for Anchorage." *Id.* at 19a. Yet "[t]he area is occupied by thousands of Alaska Natives" who "are in need of health care services" and who, "in the absence of any other recognized village organization," have nowhere else to turn for these services other than CIRI and its affiliated tribal organizations. *Id.* at 27a-28a. If CIRI loses its status as an Indian tribe for purposes of ISDEAA, a substantial portion of the State's Native population could accordingly be cut off from access to critical support.

1. While the eight federally recognized tribes in the CIRI region do provide certain services, their tribal authority and financial resources are limited. See *Anchorage Service Area Profile*, Indian Health Serv., at 30, 34, 36, 37, 38, https://bit.ly/3kwGpGD. These tribes are *not* eligible under federal law to receive funding to deliver services to the majority of Alaska Natives and American Indians who reside in areas of the CIRI region outside their tribal authority.[3]

Under NAHASDA, for instance, needs-based grant funding is allocated under a formula that incorporates Alaska Native and American Indian population data for

[3] In this context, "authority" refers both to a tribe's authority over its members and over a geographic area. See, *e.g.*, 25 C.F.R. § 900.8(g)(1)-(2) (ISDEAA contract proposal must describe "the geographical service area, if applicable, to be served" and "estimated number of Indian people who will receive the benefits or services"). For example, when Chickaloon sought to deliver health services to its citizens "outside of Chickaloon lands," the Indian Health Service required Chickaloon to "obtain a resolution from CIRI authorizing Chickaloon to provide services outside of its lands, but in the CIRI region." Cook Inlet Region, Inc. Resolution 17-13 (Oct. 18, 2017). CIRI provided that resolution. *Ibid.*

census-identified recipient areas. See 24 C.F.R. §§ 1000.324, 1000.302(4). Because the eight federally recognized tribes in the CIRI region are not eligible to claim the portions of the Municipality of Anchorage and Matanuska-Susitna Borough that lie outside their census boundaries, they receive no NAHASDA funding for those populations.

Similar limitations apply under ISDEAA. Of the eight federally recognized tribes in CIRI's region, only Eklutna, Knik, and Chickaloon are located in or near the Municipality of Anchorage and the Matanuska-Susitna Borough. But these three do not provide ISDEAA services in the most heavily populated communities within the Municipality and Borough because those communities are not subject to their tribal authority. See *Cook Inlet Treaty Tribes*, Add. at 14a-15a (describing limitations on tribes' authority to enter into ISDEAA contracts and compacts).

For example, in fiscal year 2020, Eklutna received $248,269 in Annual ISDEAA health funds, which it used to operate a small clinic. That same year, Knik and Chickaloon received $94,325 and $85,606, respectively, but neither used those funds to operate an ISDEAA medical clinic directly. Indeed, even residents within the Knik and Chickaloon service areas typically receive ISDEAA health services at facilities outside the tribes' service areas—facilities that are owned or at least partly funded by Southcentral Foundation.

The remaining portions of the Municipality of Anchorage and the Matanuska-Susitna Borough lie *outside* the tribal authority of Eklutna, Knik, and Chickaloon. See *ACS Demographic and Housing Estimates (Anchorage, Alaska)*, U.S. Census Bureau, https://bit.ly/3pns9Rj. As a result, these tribes do not receive Annual ISDEAA health

funds to provide health services to the roughly 60,000 Alaska Natives and American Indians who live there.

CIRI fills that gap. The level of CIRI's Annual ISDEAA health funding is based on the amount that the Indian Health Service historically spent to directly deliver healthcare services to Natives living in the Municipality of Anchorage and Matanuska-Susitna Borough who did not receive care provided directly by the Service to federally recognized tribes. See 25 U.S.C. § 5325(a)(1). In fiscal year 2020, Southcentral Foundation received $144,228,747 in Annual ISDEAA health funds—more than 336 times the amount of funding available to Eklutna, Knik, and Chickaloon *combined*. Southcentral Foundation used these funds to provide a comprehensive array of health services available to all Alaska Natives and American Indians in the region, regardless of where they are from.

2. If CIRI were no longer considered an Indian tribe for purposes of ISDEAA—rendering it unable to delegate its tribal authority to its designee, Southcentral Foundation—the region's federally recognized tribes would not be able to step into CIRI's shoes. The Annual ISDEAA health funds that CIRI presently receives could not simply be reallocated to these tribes. As a result, 60,000 Alaska Natives and American Indians who rely on Southcentral Foundation's services may face substantial impediments to their ability to access needed services.

Consider the large majority of the region's Native population, which lives in communities *outside* of any tribe's authority. These residents might seek services at Eklutna's clinic, which is located roughly 25 miles from Anchorage. But given that Eklutna's Annual ISDEAA health funding is a mere 0.17% of Southcentral Foundation's, the reality is that the clinic would not be able to handle the sudden influx of 60,000 additional patients,

even if they made the trip. The next closest tribal health facility is the Dena'ina Wellness Center in Kenai—operated by the Kenaitze Indian Tribe, another federally recognized tribe. But that facility is *160 miles from the Anchorage area*, and would similarly be unable to suddenly assume responsibility for providing health and other services to such a large patient population.

This burden is all the more intolerable given that ANCSA was never intended to confine Alaska Natives to their traditional villages. See pp. 10-12, *supra*. Forcing Alaska Natives who live in the Municipality of Anchorage and the Matanuska-Susitna Borough to travel great distances to receive federal services is precisely the opposite of what Congress sought to achieve.

That result is also irreconcilable with the policy underlying ISDEAA—a statute enacted to *increase* Native self-determination and *improve* the administration of federal programs for Indians. As one court aptly summarized:

> It would be senseless and wholly inconsistent with the congressional policy underlying the ISDEA[A] for that act or the [Indian Health Service] guidelines to be interpreted in a fashion which would render impossible a contract or compact for providing services to a significant body of Alaska Natives.

Cook Inlet Treaty Tribes, Add. at 25a.

3. Without any evidence, the court below discounted the practical consequences of declaring ANCs ineligible to participate in programs and services under ISDEAA. In the D.C. Circuit's view, "if there are Alaska Natives uncared for because they are not enrolled in any recognized village, either the State of Alaska or the Department of Health and Human Services will be able to fill the void." U.S. Pet. App. 25a. Not so.

To be sure, the federal government bears the ultimate trust responsibility to provide services and programs for the benefit of Alaska Natives and American Indians. But for more than three decades, the government has relied heavily on CIRI and its designated tribal organizations. Indeed, the very purpose of ISDEAA was to *end* "Federal domination of programs for, and services to, Indians," and instead to transfer administration of those programs to Indian communities, in order to render them "more responsive to the needs and desires of those communities." 25 U.S.C. § 5302.

If CIRI is no longer considered an Indian tribe for purposes of ISDEAA, some of the services it provides via its designated tribal organizations (which federally recognized tribes do not provide) may revert to the federal government. But having largely been absent from this sphere since the 1980s, the federal government will not be in a position to easily pick up the slack. Indeed, that is a serious understatement: The Indian Health Service currently provides "*no* … direct health services in Alaska." *Alaska Area Profile*, Indian Health Serv., at 6 (emphasis added), https://bit.ly/3044LhH. And its Area Office presently employs only administrative staff. See *Staff (Alaska Area)*, Indian Health Serv., https://bit.ly/3bJTdW9.

Over the years—and precisely as ISDEAA contemplated—CIRI and its designated tribal organizations have substantially improved upon and expanded the services that the federal government once provided. They have developed their own infrastructure for the delivery of these services in a manner tailored to the needs of the communities they serve. As just one example, Southcentral Foundation leverages the funds it receives from the Indian Health Service to obtain additional third-party grants and funding for its extensive operations. That infrastructure is not readily transferrable to the federal government. Nor, as Alaska's Native communities face a

global pandemic, is now an appropriate time to throw the public health system into flux.

4. Unsurprisingly, the Executive Branch has *never* interpreted ISDEAA as the court below did. On the contrary, three cabinet departments of the Executive Branch have always understood CIRI to be an Indian tribe for purposes of ISDEAA. These agencies appreciate Alaska's unique circumstances and the important gap-filling role that CIRI plays.

The Indian Health Service, a division within the Department of Health and Human Services, has issued guidelines for entering into ISDEAA contracts in Alaska, which list "village profit corporation[s]" and "regional profit corporation[s]" under ANCSA as entities eligible to authorize such contracts. Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts, 46 Fed. Reg. 27,178, 27,179 (May 18, 1981).

The Bureau of Indian Affairs, a sub-agency within the Department of Interior, has similarly recognized that an ANC, despite not being a federally recognized Indian tribe, is "made eligible for Federal contracting and services by statute." Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993); see *Douglas Indian Ass'n* v. *Juneau Area Director*, 27 I.B.I.A. 292, 293 (1995) (identifying "the local ANCSA … village/urban for-profit corporation" and "ANCSA Regional for-profit corporation" as entities "[BIA] would recognize" and from which it would "require supporting resolutions" under ISDEAA).

The Office of Public and Indian Housing, a division of the Department of Housing and Urban Development, recognizing "the unique circumstances in Alaska," permits ANCs to receive funding under NAHASDA. 24 C.F.R. §§ 1000.302, 1000.327.

II. CIRI's provision of critical services to Alaska Natives and American Indians demonstrates that ANCs satisfy the Eligibility Clause

The myriad ways the federal government has enlisted the assistance of CIRI and other ANCs—and the robust role that ANCs have historically played in implementing essential federal programs and services for Alaska Natives and American Indians—illustrate that ANCs easily satisfy the Eligibility Clause. Simply put, ANCs are (1) "eligible for the special programs and services provided by the United States to Indians because of their status as Indians," and they are (2) "recognized" as such. 25 U.S.C. § 5304(e).

A. Congress and the Executive Branch recognize ANCs as eligible for Indian-specific programs and services

ANCSA expressly states that "Alaska Natives *shall remain eligible* for all Federal Indian programs on the same basis as other Native Americans." 43 U.S.C. § 1626(d) (emphasis added). As CIRI's experience demonstrates, ANCs are active partners alongside the Executive Branch in those programs and services that Congress has enacted in fulfillment of its responsibilities toward Indians. Accordingly, ANCs are unquestionably "eligible" within the statute's meaning.

ANCs are also "recognized" as eligible for these programs and services. The plain meaning of "recognized" is "acknowledged"; ISDEAA itself uses the word in that sense elsewhere in the statute. See 25 U.S.C. § 5302(a) ("The Congress hereby *recognizes* the obligation of the United States to respond to the strong expression of the Indian people for self-determination") (emphasis added). Both Congress and the Executive Branch have repeatedly acknowledged ANCs' eligibility to administer programs and services directed to Alaska Natives.

CIRI's Title V compact under ISDEAA is perhaps the clearest evidence on this point. The preamble reaffirms the federal government's "unique and continuing relationship" with, and "special trust responsibilities" to, Alaska Natives and American Indians. Alaska Tribal Health Compact (amended and restated Oct. 1, 2010), Dist. Ct. Dkt. 78-2, Ex. 2, at 3. The Compact acknowledges that Congress defined the term "Indian tribe" broadly in ISDEAA to "ensur[e] that all Alaska Natives and America[n] Indians in Alaska can receive the services provided by the Federal Government through *an Alaska Native provider*." *Id.* at 2 (emphasis added). Though CIRI is not a sovereign tribe, the Executive Branch treats the compact as establishing a "government-to-government relationship" with CIRI for purposes of providing health services to Alaska Natives under ISDEAA. 25 C.F.R. § 1000.161; see pp. 14, 16-17, *supra*. No more is necessary to satisfy the "recognized" component of the Eligibility Clause.

Congress has also enacted numerous Indian-specific statutes expressly recognizing ANCs as eligible to provide the benefits that Congress authorizes for Alaska Natives and American Indians. For example:

- Tribal regional organizations, including organizations affiliated with regional ANCs, are eligible to administer the tribal TANF program in Alaska. 42 U.S.C. §§ 612, 619(4)(B).
- ANCs are "Indian tribes" for purposes of NAHASDA housing assistance grants. 25 U.S.C. §§ 4103(13)(B), 4111.
- ANCs are "Indian tribes" for purposes of energy assistance through tribal grants to promote the development of energy resources on Indian land. *Id.* §§ 3501(4), 3502.

- ANCs are "Indian tribes" for purposes of protecting archaeological resources on public lands and Indian lands. 16 U.S.C. § 470aa(b), bb(5).
- Congress listed regional ANCs alongside tribes as entities "eligible" for grants "to develop and maintain, or to improve and expand, programs that support schools … using Native American and Alaska Native languages as the primary languages of instruction." 20 U.S.C. § 7453(b)(1)-(2).
- Congress directed "all Federal agencies" to "consult with Alaska Native corporations on the same basis as Indian Tribes." 25 U.S.C. § 5301 note. Interior Department policy requires consulting with ANCs regarding "[a]ny activity that may impact the ability of an ANCSA Corporation to participate in Departmental programs for which it qualifies." Dep't of Interior, *Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations* (2012).[4]
- The ISDEAA definition or an analogue is used in a number of other statutes under which CIRI's tribal organizations provide programs and services, including:
    - The Indian Health Care Improvement Act, 25 U.S.C. § 1603(14);
    - The Head Start Act, 42 U.S.C. § 9832(12);

[4] See, *e.g.*, Small Bus. Admin., *Tribal Consultation Policy* (2016) (requiring consultation with ANCs "in recognition of our Nation's responsibilities to American Indian and Alaska Native tribes and Alaska Native Corporations"); Fed. Energy Reg. Comm'n, *Revision to Policy Statement on Consultation with Indian Tribes in Commission Proceedings* (2019) ("recogniz[ing] … the statutory relationship between ANCSA Corporations and the Federal Government").

- The Family Violence Prevention and Services Act, 42 U.S.C. § 10402(5); and
- The Violence Against Women Act, 34 U.S.C. § 12291(a)(16).

Federal agencies likewise "recognize" ANCs. The Executive Branch, for example, has published guidelines explaining that it will "recognize" an ANC as the "village governing body" (and thus the "Indian tribe" eligible to contract and provide authorizing resolutions) whenever no Indian Reorganization Act council or traditional village council exists. 46 Fed. Reg. 27,178, 27,179 (May 18, 1981). That understanding is consistent with the decades-long practices of the Interior Department and the Department of Health and Human Services of contracting and compacting with CIRI and other ANCs in addition to federally recognized tribes. See pp. 16-17, *supra*.

B. Section 325(d) reconfirms Congress's understanding that CIRI is an "Indian tribe" for ISDEAA purposes

Congress has taken further steps to buttress the clear meaning of ISDEAA. In 1997, Congress enacted a statute for the management of certain statewide health facilities in Alaska. Pub. L. No. 105-83, 111 Stat. 1543, 1598 (1997). Section 325(d) of that law clearly reflects and reconfirms Congress's understanding that CIRI is the ISDEAA "Indian tribe" for significant portions of the Municipality of Anchorage and the Matanuska-Susitna Borough.

In 1997, the Indian Health Service decided to transfer its management of statewide health facilities to Native control. Because these facilities would provide services to Alaska Natives and American Indians from across the State, a dispute arose over whether CIRI (through Southcentral Foundation) was required to obtain ISDEAA authorizing resolutions from each of the more than 200 tribes in Alaska before it could provide certain services at

the new facilities under Southcentral Foundation's *existing* compact and funding agreement. 25 U.S.C. § 5321(a); see *id.* § 5304(*l*) (if an organization is "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"); see also *Cook Inlet Treaty Tribes* v. *Shalala*, 166 F.3d 986, 987-89 (9th Cir. 1999) (describing the dispute).

Congress stepped in to resolve the dispute, enacting a law that provided:

> Cook Inlet Region, Inc., through Southcentral Foundation … is hereby authorized to enter into contracts or funding agreements under [ISDEAA] 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 resolutions from any other Alaska Native Region, village corporation*, Indian Reorganization Act council, or tribe, no matter where located.

Pub. L. No. 105-83, § 325(d), 111 Stat. 1543, 1598 (1997) (italics and underline added). Section 325(d) thus mooted the dispute over tribal authorizing resolutions. See *Cook Inlet Treaty Tribes*, 166 F.3d at 989-90. But beyond addressing that specific dispute, Section 325(d) is significant because it reflects Congress's understanding that CIRI is an Indian tribe for purposes of ISDEAA, in two ways.

First, Section 325(d) reconfirmed Congress's understanding that CIRI itself was *already* an "Indian tribe" with authority to enter into contracts and compacts under ISDEAA. Indeed, by the time Congress enacted Section 325(d), CIRI had been engaged in contracting and compacting for well over a decade. Although Congress stepped in to resolve the dispute about CIRI's authority to provide services to members of more than 200 federally

recognized tribes without first obtaining the approval of each tribe, no one questioned CIRI's authority to continue providing services to the tens of thousands of Alaska Natives and American Indians living in the CIRI region in communities outside any federally recognized tribe's authority. Section 325(d) is thus clear evidence Congress understood that CIRI served as the ISDEAA "Indian tribe" for those areas *before the law's enactment*.

Second, Section 325(d) also reflected that Congress viewed *all* regional and village ANCs as "Indian tribes" for ISDEAA purposes. After all, only "Indian tribes" can provide authorizing resolutions, 25 U.S.C. § 5304(*l*), and Congress deemed it necessary to waive the need for such resolutions from federally recognized tribes *or* from "Alaska Native Region[al]" or "village corporations."

Thus, contrary to the plaintiffs' suggestion below, see Confederated Tribes MSJ Mem., Dist. Ct. Dkt. 77, at 38, CIRI's eligibility to provide services under ISDEAA does not come from Section 325(d). Regardless of what additional authority Congress conveyed to CIRI under the law, it is clear that Section 325(d) reconfirmed Congress's recognition of CIRI's longstanding status as an "Indian tribe" with the authority to contract and compact for the delivery of federal services to Indians because of their status as Indians.

* * *

Working closely with federally recognized tribes, ANCs step into the shoes of the federal government to provide much-needed programs and services to Alaska Natives and American Indians, ranging from healthcare to housing assistance to workforce development. Where no federally recognized tribe exists or provides these programs and services, ANCs like CIRI are the *only* source of these tribal benefits.

These services are all the more essential today, as Alaska Natives and American Indians continue to suffer disproportionately from the devastating health and socio-economic consequences of the COVID-19 pandemic. Absent the services that CIRI and its designated tribal organizations provide, 60,000 Alaska Natives and American Indians living in the Municipality of Anchorage and the Matanuska-Susitna Valley will lack critical resources needed to address the health emergency. Neither the statutory text, nor decades of federal agency practice, supports that harsh result.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

Respectfully submitted.

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MARCH 2021

ADDENDUM

ADDENDUM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

COOK INLET TREATY TRIBES, *et al.*, Plaintiffs, vs. DONNA E. SHALALA, Secretary of Health & Human Services, Defendant, and COOK INLET REGION, INC., and SOUTHCENTRAL FOUNDATION, Intervenor-Defendants.	)	No. A94-0589-CV (HRH)

O R D E R

Motions for Summary Judgment

Defendant has moved for summary judgment[1] on the first cause of action[2] in plaintiffs' complaint. The intervenors have separately moved for summary judgment.[3]

[1] Clerk's Docket No. 38.

[2] By stipulation filed March 5, 1996, at Clerk's Docket No. 34, the parties agreed to the dismissal without prejudice of the balance of plaintiffs' complaint. Intervenors' counterclaim was voluntarily dismissed on June 27, 1995, at Clerk's Docket No. 17.

[3] Clerk's Docket No. 39.

Plaintiffs have filed a cross-motion for summary judgment in their favor.[4] Oral argument has been heard.

This is a dispute about money and power amongst Native villages of the Cook Inlet region and the regional corporation serving the area, Cook Inlet Region, Inc. (CIRI). The question is who shall administer health care funds for the Alaska Natives living in the Anchorage service area. The Indian Health Service (IHS) has awarded a contract to Southcentral Foundation (SCF), an organization sanctioned by CIRI to receive and administer health care funds in the Anchorage service area. The plaintiff Native villages challenge this award.

The lead plaintiff, Cook Inlet Treaty Tribes, is a voluntary association formed by Alaska Native Claims Settlement Acts[5] (herein "Settlement Act") village corporations associated with intervenor CIRI. The individually named village plaintiffs--Chickaloon Native Village, Eklutna Native Village, Ninilchik Village, and Seldovia Village Tribe--are four of the five signatories to the Cook Inlet Treaty Tribe Association agreement.[6] These four villages are joined by the Knik Tribe in this suit. All of the foregoing Native villages are Indian tribes for purposes of the Indian Self-Determination and Education Assistance Act (ISDEA), Pub. L. No. 93-638 (Jan. 4, 1975), 83 Stat. 2203, 25 U.S.C. § 450b(e) (Supp. 1996).

Defendant Shalala is the Secretary of the United States Department of Health & Human Services and is the ultimate responsible official with respect to administration of the ISDEA.

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[4] Clerk's Docket No. 40.

[5] 43 U.S.C. § 1601, et seq. (1983 & Supp. 1996).

[6] By stipulation filed November 8, 1995, the fifth signatory to the association agreement, the Native Village of Tyonek, was dropped as plaintiff. Clerk's Docket No. 25.

CIRI is a regional corporation formed pursuant to the Settlement Act, 43 U.S.C. § 1606(d), and is also an Indian tribe under the ISDEA, 25 U.S.C. § 450b(e) (Supp. 1996). SCF is a non-profit entity organized by CIRI and to which CIRI has delegated its tribal authority for purposes of contracting and compacting under the ISDEA. SCF is a tribal organization under the ISDEA. 25 U.S.C. § 450b(*l*) (Supp. 1996).

The focal point of plaintiffs' declaratory claim, which is the first cause of action of their complaint, is Title III of the ISDEA. Title III makes provision for compacts between the federal government and Indian tribes under which the government funds Indian benefit programs administered by tribes. The Title III compact program was initiated in 1988 by Public Law No. 100-472, 102 Stat. 2285, 2296-98 (Oct. 5, 1988), as a tribal self-governance demonstration project.[7] Section 301 of Title III authorizes the defendant Secretary to conduct the research and demonstration projects for a term of eighteen years. Section 302 of Title III provides that for each fiscal year, the Secretary should select thirty tribes for the tribal self-governance project. Additionally, and laying aside a statutory requirement for geographic representation, in order to be in the pool of qualified applicants, a tribe must: (1) request participation, (2) have operated two or more mature contracts under Title 1,[8] and (3) have demonstrated for the previous three fiscal years financial stability and financial management capability evidenced by no significant or material audit exceptions with respect to ongoing self-determination contracts.

For purposes of ISDEA contracts, the federal defendant in 1981 adopted and noticed "Alaska area

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[7] Title III is not codified; however, it is reprinted in the Historical and Statutory Notes following 25 U.S.C. § 450f (Supp. 1996).

[8] 25 U.S.C. § 450f (1983).

guidelines for tribal clearances, for Indian self-determination contracts." 46 Fed. Reg. 27,178 (May 18, 1981). After reciting both the purpose and underlying statutory authority for such contracts, the notice specifies that:

> For the purposes of contracting under Pub. L. 93-638, the Alaska Area will recognize as the village governing body the following entities in order of precedence:
>
> If there is an Indian Reorganization Act (IRA) Council, and it provides governmental functions for the village, it will be recognized.
>
> If there is no IRA Council, or it does not provide governmental functions, then the traditional village council will be recognized.
>
> If there is no IRA Council and no traditional village council, then the village profit corporation will be recognized.
>
> If there is no IRA Council, no traditional village council, and no village profit corporation, then the regional profit corporation will be recognized for that particular village.

46 Fed. Reg. 27,179 (May 18, 1981). The foregoing guidelines were, as discussed below, included verbatim in the Title III compact which is the subject of this case.

The ISDEA and the 1981 notice also make provision for the Indian tribe to create and designate an independent organization of Indians, such as intervenor SCF, for purposes of providing health care services. 25 U.S.C. § 450f(a)(2) (Supp. 1996); 46 Fed. Reg. 27,178 (May 18, 1981).[9]

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[9] The federal defendant and the other parties all correctly take the position that compacts under Title III of the ISDEA are, to the extent relevant, governed by the terms of Title I of the ISDEA.

Prior to 1985, and under Title I of the ISDEA, health care and related services to Natives residing in the Municipality of Anchorage (excluding Eklutna Village)[10] were provided through the Cook Inlet Native Association (CINA), a tribal organization authorized by the local regional corporation, CIRI. In 1985, CIRI withdrew its authorization of CINA, and SCF was authorized by CINA to provide such services. CINA and others, including Eklutna and Ninilchik, filed suit against the Secretary. CINA v. Heckler, No. A84-0571-CV, Memorandum of Decision (Jan. 6, 1986).

The principal legal issue raised by CINA v. Heckler was the interpretation of the definition of the term "Indian tribe" as used in the ISDEA, 25 U.S.C. § 450b(b) (1983),[11] and the interpretation of the definition of "tribal organization" as used in the ISDEA, 25 U.S.C. § 450b(c) (1983).[12] This court held that the term "regional corporation" employed in subsection 450b(b) (now codified at subsection 450b(e)) of the ISDEA referred to regional, for-profit corporations formed pursuant to the Settlement Act.[13] Then and now, it was undisputed that CIRI is the regional corporation for the geographic area including the Municipality of Anchorage. This court rejected the proposition that the Cook Inlet Native Association, although mentioned in the Settlement Act, 43 U.S.C. § 1606(a)(6), was a regional corporation as defined by the Settlement Act, 43 U.S.C. § 1602(g), or for purposes of the ISDEA. This court rejected the notion that CIRI was not a tribe for ISDEA purposes because it is not an historical tribe,

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[10] Hereinafter, when the court refers to the "Municipality of Anchorage", we mean the geographic area of that city exclusive of the Eklutna Native Village.

[11] Now codified as 25 U.S.C. § 450b(e) (Supp. 1996).

[12] Now codified as 25 U.S.C. § 450b(*l*) (Supp. 1996).

[13] CINA v. Heckler, No, A84-0571-CV, Memorandum of Decision at 8 (Jan. 8, 1986).

holding that Congress has the power to determine what entities will be treated as tribes for purposes of statutes benefitting Indians.[14]

In CINA v. Heckler, the plaintiffs argued that the government should act upon the village plaintiffs' requests as regards the issuance of contracts rather than upon the request of CIRI. In this regard, the plaintiffs in CINA v. Heckler pointed to the order of precedence set out in the 1981 guidelines and claimed priority over CIRI. The court rejected this argument.

In rejecting the villages' argument, the court observed that the contracts then in question were not for services to be provided to one of the villages, nor were the contracts for regional services. Contracts for services were to be provided for the area comprising the Municipality of Anchorage (excluding the Village of Eklutna). None of the CINA plaintiff villages was an IRA council for the Municipality of Anchorage. None except Eklutna provided governmental functions within the Municipality of Anchorage, and Eklutna had no governmental function except for the village area.[15] None was the traditional village council or village profit corporation for the Municipality of Anchorage excluding Eklutna. CINA was not a village entity of any kind, nor a regional for-profit corporation. The court found in CINA v. Heckler that CIRI was the Indian tribe entitled to request the award of service contracts under the ISDEA.[16]

It was argued in CINA v. Heckler as an alternative position that if CIRI alone may contract through a

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[14] Id. at 11.

[15] Eklutna operates with a village council under an IRA constitution which has application in the geographic area of the village as described in its constitution.

[16] CINA v. Heckler, No. A64-0571-CV, Memorandum of Decision at 14 (Jan. 8, 1986).

designee for services, the contracts must be limited to CIRI members. Plaintiff's theory was based upon 25 U.S.C. § 450b(c) which contains a proviso that where a contract benefits more than one Indian tribe, the approval of each such tribe is a prerequisite for letting the contract. This court adopted the defendant's interpretation of 25 U.S.C. § 450b(c) (now codified at subsection 450b(*1*)) holding that the order of precedence guidelines adopted by the government adequately involve villages in decision-making as the first, second, and third priority parties in designating organizations to receive contracts. The court further held that:

> Where (as is the case of Anchorage) there is no applicable village entity, it is reasonable and appropriate for the regional for-profit corporation to be designated as the "Indian tribe" for such area. Such regulation and the conclusion that no village entity is directly benefitted by the Municipality of Anchorage contracts are reasonable interpretations and applications of 25 U.S.C. § 450b(c). To interpret the latter statute as plaintiffs would have the Court do would greatly inhibit rather than foster the purposes of the (ISDEA).[17]

After disposing of other issues not now pertinent, the court concluded that the government's award of contracts to CIRI designees were in all respects in accordance with law and based upon substantial evidence. The court held that the government properly refused to contract with CINA.

This court's decision in CINA v. Heckler was affirmed, sub nom., Cook Inlet Native Ass'n v. Bowen, 810 F.2d 1471 (9th Cir. 1987). The court of appeals rejected the argument that reference to CINA in the Settlement Act constituted it a regional corporation for purposes of

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[17] Id. at 16.

the ISDEA. The court of appeals also rejected the argument that CIRI could not be an Indian tribe for purposes of the ISDEA because it was not eligible for programs and services provided by the government. In affirming this court's decision, the court of appeals approved the government's interpretations of the ISDEA as reasonable, and in this regard made express reference to the establishment of "priorities for determining the governing body of a tribe from the eligible, competing entities." Bowen, 810 F.2d at 1477.

As of October 1, 1994, the defendant Secretary, through the director of the Indian Health Service, entered into a compact with certain Alaska Native tribes pursuant to Title III of the ISDEA.[18] Included amongst the compact tribes was Cook Inlet Region, Inc., and its authorized tribal organization, Southcentral Foundation.[19] As required by Title III, the compact has been the subject of annual renewal in fiscal year 1995 for fiscal year 1996. As a general proposition, plaintiffs contend that the compact is inconsistent with the ISDEA insofar as the joinder of CIRI and SCF in that compact. More particularly, plaintiffs assert that "[t]he central issue in this case is whether the IHS followed its own compacting priorities when it entered into the compact with SCF/CIRI."[20] As discussed above, the compact in question expressly incorporates the IHS order of precedence guidelines as having been employed in the compacting process.

Defendant and intervenors contest the plaintiffs' standing to raise the foregoing issue; and, in the alternative, contend that issue preclusion doctrines (collateral estoppel and/or res judicata) bar plaintiffs from litigating the foregoing issue.

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[18] Clerk's Docket No. 40, Ex. 1.

[19] Id., Ex. 1 at 63.

[20] Id., Motion for Summary Judgment at 8.

The court will first address the standing and issue preclusion arguments.

Standing

The issue of standing is a fundamental jurisdictional inquiry having its roots in Article III of the Constitution of the United States. To have standing, a plaintiff must establish that it suffered an "injury in fact", that the injury is fairly traceable to the defendant's action, and that it is likely that the injury will be redressed by a favorable ruling. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

If the plaintiffs lack standing, then this court lacks the power to entertain their complaint. Moreover, there is a prudential as well as a constitutional dimension to standing. Thus we read in Warth v. Seldin, 422 U.S. 490, 498-99 (1975), that the standing inquiry:

> [I]nvolves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. ….
>
> In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. ….
>
> Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts' decisional and remedial powers.

It is the court's view that the standing controversy in this case partakes somewhat of both of these two aspects or standing. See 13A Wright, Miller & Cooper, Federal Practice and Procedure (Second) § 3531 (1984 & Supp. 1996). In its constitutional dimension, the standing challenge asks the question: Does the plaintiff have a personal stake in the litigation? In its prudential dimension, the

standing challenge asks the question: Are there practical (prudential) reasons why the court should not entertain the plaintiffs' action? Professors Wright, Miller & Cooper seem to conclude that it is fruitless to try and delineate the elements for or rules of prudential consideration of whether a plaintiff has standing. Courts will consider whether the plaintiffs' complaint is brought in such a way and at such a time as to lead to a useful decision on the merits. Id. § 3531, at 347-48.

This court has jurisdiction of cases and controversies brought against the defendant Secretary under the IDEA. 25 U.S.C. § 450m-1(a) (Supp. 1996).

Both the defendant and the intervenors challenge the plaintiffs' standing to initiate this declaratory judgment action for the purpose of challenging the compact between the defendant and the intervenors. As set out above, a challenge to the standing of a party raises the issue of whether or not a party has a sufficient stake in the outcome of the controversy to warrant that party's invocation of federal jurisdiction. Warth v. Seldin, 422 U.S. 490, 496-99 (1975) (citing Baker v. Carr, 369 U.S. 186, 204 (1962)). Thus the standing issue focuses attention upon the party seeking to obtain relief from the court. United States Supreme Court has further said, in Flast v. Cohen, 392 U.S. 83 (1968):

> The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request

> adjudication of a particular issue, and not whether the issue itself is justiciable.

Flast, 392 U.S. at 99-100 (footnote omitted).

Several of the plaintiffs lack standing.

Cook Inlet Treaty Tribes, collectively. All of the plaintiff villages are within the geographic region of CIRI. Plaintiffs concede that CIRI is a tribe for purposes of the ISDEA. Through SCF, CIRI provides health services in the Anchorage metropolitan area, excluding Eklutna, for some 14,000 Alaska Natives living in Anchorage, and another 1,800 Alaska Natives living in the Matanuska Valley outside the villages of Knik and Chickaloon. Some 2,900 of the beneficiaries are CIRI shareholders. The rest are associated with some other tribal entity.

Certain of the information concerning the plaintiffs is applicable to all five of the plaintiff villages and plaintiff Cook Inlet Treaty Tribes. The villages of Eklutna, Ninilchik, and Seldovia have completed a self-governance planning grant as a predicate for consideration as a potential compact recipient and have held one or more health services compacts. None of the plaintiffs, including Eklutna, Ninilchik, and Seldovia, completed a self-governance planning grant which had as its focus the providing of health services in the area of the Municipality of Anchorage, excluding the area of Eklutna Village. Plaintiffs did not seek the compact in question, were not considered for it, and were not rejected as service providers by the IHS. Plaintiffs appear to act as spoilers—spoilers of a congressionally sanctioned demonstration project which is intended to foster tribal self-governance while providing needed benefits for Anchorage area Native residents. Under these circumstances, prudence demands caution as regards the standing issue.

Chickaloon Native Village. Chickaloon Native Village is located in the Matanuska-Susitna Borough some

70 miles north of the northerly boundary of the Municipality of Anchorage. The village has never applied for nor received a Title I contract from the IHS. The village claims that the area of the Municipality of Anchorage is within its traditional use and jurisdictional area. However, the village has not demonstrated control of any Settlement Act lands within the Municipality of Anchorage nor any other basis for a claim that lands within the Municipality of Anchorage are Indian country subject to the village's jurisdiction. 18 U.S.C. § 1151. The village has not completed its tribal enrollment; however United States census figures for 1990 show the population of the village to be 9.[21]

Eklutna Native Village. Eklutna, while within the boundaries of the Municipality of Anchorage, is 25 miles from the core area of the city. The village has and administers a Title III compact for residents of the village. The village claims that the area of the Municipality of Anchorage is within its traditional use and jurisdictional area. However, Eklutna, like Chickaloon, has made no showing of jurisdiction over lands within the Municipality of Anchorage but outside the village. The village has approximately 129 enrolled members, of which 50 live within the village.

Ninilchik Village. The Ninilchik Village is located on the Kenai Peninsula, well over 100 road miles from the Municipality of Anchorage. The village does not claim to be the tribe for the area of the Municipality of Anchorage. The village holds a Title III compact to provide services for Natives of the village and in the vicinity of the village. Ninilchik may have only a health services contract. The village enrollment is 455 people.

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[21] Chickaloon's claim of a census error (Clerk's Docket No. 40, at 18) has no nexus with the village's claim that the government wrongly entered into a compact with the intervenors.

Seldovia Village Tribe.[22] The Seldovia Village Tribe is located on the Kenai Peninsula, over 150 road miles from the Municipality of Anchorage. The village does not claim to be the tribe for the area of the Municipality of Anchorage. The village holds a Title III compact to provide services for natives of the village and in the vicinity of the village. The village population is estimated to be 500.

Knik Tribe. The Knik Tribe is located to the northwest of the Municipality of Anchorage, across Cook Inlet and some 60 road miles from the core of the Municipality of Anchorage. The village has never applied for nor received a Title I contract from the IHS. The village claims that the area of the Municipality of Anchorage is within its traditional use and jurisdictional area. However, the village has not demonstrated control of any Settlement Act lands within the Municipality of Anchorage nor any other basis for a claim that lands within the Municipality of Anchorage are Indian country, as defined at 18 U.S.C. § 1151 (1934), subject to the village's jurisdiction. The village has 35 enrolled members, of which approximately 10 live within the village.

The court concludes that Ninilchik Village and Seldovia Village Tribe lack standing. The record fails to demonstrate any injury in fact to these two villages. Each has its own separate arrangements through which health services for Natives of the village and surrounding area are funded. Even if some theoretical injury were perceived, it is highly unlikely that any such injury would be

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[22] Seldovia has claimed injury by reason of the diminution of funds available for a water safety program. Not only does the government's opposition strongly suggest that Seldovia's belief in this regard is baseless, but, in addition, the plaintiffs have dismissed that portion of their complaint which makes claim against the government for reduced services. Seldovia cannot claim injury for its first cause of action on the basis of facts having to do with a dismissed cause of action.

redressed by a favorable ruling on the issue of the manner in which the government has applied its guidelines for prioritizing applicants for compacts for the Municipality of Anchorage. These villages have no stake in the compact at issue. Also, prudential considerations come into play. Seemingly Ninilchik and Seldovia would upset a compact under which health care services are provided to thousands of residents of the Municipality of Anchorage in the absence of any other competing applicant for a compact for such services.

The Chickaloon Native Village and the Knik Tribe fare no better. The claim of these villages that they have jurisdiction of the area of the Municipality of Anchorage is meritless. So far as the court is aware, neither village owns or controls any land within the Municipality of Anchorage. They have shown no basis for a determination that the Municipality of Anchorage is Indian country or subject to their jurisdiction. Moreover, and to the extent that either village may have once asserted aboriginal rights as to the lands within the Municipality of Anchorage, all such rights have been abrogated by the Settlement Act, 43 U.S.C. § 1603(b), (c) (1986). These two villages could not even qualify for a compact due to the fact that they have never successfully administered an IHS contract. These villages are not injured by reason of the fact that CIRI/SCF holds the compact for the Anchorage area. They have no stake in the compact at issue.

In summary, the court finds that there is no genuine dispute of facts material to a determination of the standing of the villages of Ninilchik, Seldovia, Knik, and Chickaloon. The former two admittedly do not assert jurisdiction over lands within the Municipality of Anchorage. The latter two admittedly do not qualify to compact with the IHS. None of these villages was a competitor of the intervenors in the administrative process which led to the issuance of a compact with the intervenors. These four

villages do not have standing to challenge the issuance of and IHS compact in favor of the intervenors.

This leaves Eklutna. In its opening brief, the government makes no contention that Eklutna lacks standing.[23] Eklutna is located within the boundaries of the Municipality of Anchorage. It asserts jurisdiction over the city.[24] However, the Constitution of the Native Village of Eklutna limits its territorial jurisdiction to "lands selected under the Alaska Native Claims Settlement Act and any other lands acquired by this Village, or any Indian country as may exist."[25] Eklutna has made no showing that lands within the Municipality of Anchorage but outside the village are Indian country.

Eklutna cannot claim to have been harmed by reason of the allocation of compact funds. That issue was given up by the plaintiffs when they dismissed their second cause of action. Although Eklutna has, in the opinion of the court, no land base for claiming jurisdiction of the area of the Municipality of Anchorage (excluding Eklutna Village itself), the court is unpersuaded that there is so little nexus between Eklutna's presence within the Anchorage bowl and IHS compacting as to leave Eklutna without standing in this case. As noted above, the principal issue which all of the plaintiffs would urge is that the IHS has

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[23] At page 18 of its opposition memorandum (Clerk's Docket No. 46), the government contends that Eklutna has failed to come forward with evidence of any injury.

[24] Although Eklutna has made no showing that it controls land outside the village within the Anchorage area, the court takes official notice of the fact that the vast majority of the lands within the Municipality of Anchorage are either privately owned or are federal military reservations. There is virtually no possibility of Eklutna having significant land holdings within the Municipality of Anchorage other than those lands which it presently owns and as to which it currently operates a free-standing Title III compact.

[25] Clerk's Docket No. 39, Intervenor's Memorandum in Support of Motion for Summary Judgment, Ex. 10 at 1.

misapplied its priority guidelines and, in that regard, has failed to make a finding that Anchorage is a village.[26] As the present holder of a Title III compact for a discrete but limited area within the Municipality of Anchorage, Eklutna has an obvious, readily discernable interest or stake in the question of how the priorities should be interpreted for the Municipality of Anchorage as a whole. Both the IHS compact at issue and those held by Ninilchik and Seldovia make provision for benefits to be afforded Natives residing outside the primary service compact area. In theory, at least, the IHS has recognized the possibility of a village Title III compact serving those outside the village.

The court concludes that Eklutna has standing.[27]

Res Judicata

The defendant and intervenors contend that plaintiffs' claims are barred by application of the doctrine of res judicata and/or collateral estoppel. In the Ninth Circuit, res judicata "embraces two doctrines, claim preclusion and issue preclusion (or collateral estoppel)." McClain v. Apodaca, 793 F.2d 1031, 1033 (9th Cir. 1986).

> Claim preclusion "treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same 'claim' or 'cause of action'." Claim preclusion "prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." ….
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> The doctrine of issue preclusion prevents relitigation of "all issues of fact or law that were actually

[26] Clerk's Docket No. 40 at 8, 12.

[27] Since one of the Native villages has standing, there is no point in thrashing the question of whether or not an association made up of several villages, including Eklutna, does or does not have standing.

> litigated and necessarily decided" in a prior proceeding. "In both the offensive and defensive use situations the party against whom estoppel (issue preclusion) is asserted has litigated and lost in an earlier action." The issue must have been "actually decided" after a "full and fair opportunity" for litigation.

Robi v. The Five Platters, Inc., 838 F.2d 318, 321-22 (9th Cir. 1988) (citations omitted; alteration in Robi).

As discussed at length above, this court previously entertained an action brought by the Cook Inlet Native Association, a disappointed IHS, Title I contract applicant, and, among others, the Native Village of Eklutna.[28]

Defendant and the intervenors contend that plaintiffs' complaint in this case is a precluded claim under the above authories. The Ninth Circuit test for claim preclusion involves the consideration of four factors:

> (1) [W]hether the rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Costantini v. Trans World Airlines, 681 F. 2d 1199, 1201-2 (9th Cir.), cert. denied, 459 U.S. 1037 (1982). Applying the foregoing factors, the court concludes that the plaintiff's claim is not precluded.

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[28] There is some confusion over the identity of other active parties to the CINA case. That uncertainty was immaterial in CINA and is irrelevant here since the court finds that other possible village plaintiffs in CINA do not have standing in this case.

Also, inasmuch as the Native Village of Eklutna was clearly a party to CINA, there is no need to address the defendant's and intervenor's contention that other plaintiffs in this case are bound by the doctrine of virtual representation.

The rights or interests at risk here have to do principally with intervenors' providing of health care services to Natives in the Municipality of Anchorage, excluding Eklutna. Intervenor's performance under the compact is legally a different set of rights from the intervenors' performance under the IHS contract, which was the subject of the CINA litigation and which contract is no longer in force. While there are certain areas of overlap between the evidence relevant to the present claim and that relevant to the CINA claim, the court here deals with a distinctly different and separate administrative decision by the IHS which must stand or fall on the basis of the 1994 compacting decision, not facts relevant to the earlier contracting decision which was at issue in CINA. While it may be said that this suit and CINA involve infringement of the same kind of right, that is true only in a broad sense. Both cases involved the providing of health care services under the ISDEA by tribal organizations. Finally, and as already suggested, this and the CINA litigation arise from entirely separate administrative decisions. Although both suits arise under the ISDEA, and although the use and application of the IHS guidelines for prioritizing service providers were involved in both, there is no identical nucleus of facts underlying both suits.

The court concludes that the doctrine of claim preclusion does not apply to the first cause of action of plaintiff's complaint.

On the other hand, the doctrine of issue preclusion does apply in this case. The court has before it the Native Village of Eklutna as a viable plaintiff, and the successor in office to the Secretary of Health & Human Services as defendant. On the foregoing authorities, those issues which were actually litigated and necessarily decided in the course of CINA may not be litigated by these same parties again in this case.

The principal issue litigated in CINA was the question of whether CIRI was an Indian tribe for purposes of the ISDEA. The court determined that it was. Another issue litigated and decided in CINA approached the issue plaintiffs would litigate here. In CINA, the plaintiffs contended that only village entities, not CIRI (a statutory tribe) were entitled to initiate IHS contracts. This court rejected that theory. The court held in CINA that:

> 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(s) governmental functions within the Municipality of Anchorage, excluding Eklutna. No plaintiff is the traditional village council or village profit corporation for Anchorage. Plaintiff CINA is not a village entity of any kind and is not a regional for-profit corporation.
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> Thus the federal defendants concluded that CIRI was the only "Indian tribe" in the Municipality of Anchorage. Before reaching this conclusion, the federal defendants considered the location of the seven villages, including the plaintiff villages, with the Cook Inlet Region[29] 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. The

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[29] The seven villages within the Cook Inlet Region are: Kenai, Chickaloon, Eklutna, Knik, Ninilchik, Seldovia, and Tyonek. CINA v. Heckler, No. A84-0571-CV, Memorandum of Decision at 14 n.4 (Jan. 8, 1986).

> defendants' conclusion that CIRI was the Indian tribe entitled to request the award of service contracts under the Act is clearly supported by substantial evidence.[30]

The court thus held that CIRI could initiate an IHS contract for Native health services for the Municipality of Anchorage exclusive of Eklutna, The court in CINA also considered and rejected plaintiff's contention that all affected villages must approve contracts for services to their members.[31]

For their part, plaintiffs disavow any intention of relitigating the question of whether CIRI is an Indian tribe for purposes of the ISDEA. Plaintiffs also do not seek to challenge the status of SCF as CIRI's appointed tribal organization. Rather, the plaintiffs stake out as the focal point of their complaint defendant's application of its guidelines for prioritizing possible compact parties. And, more particularly, plaintiffs contend that the IHS has failed to find that Anchorage is a village for purposes of the guidelines. Plaintiffs contend that, "[a]bsent such a finding, the IHS has no basis for compacting with CIRI to provide health care services in Anchorage.[32] Plaintiffs contend that even if the IHS is deemed to have made such a finding about Anchorage, that such finding is unsupported by the record. Ultimately plaintiffs contend that either the Native Village of Eklutna or others found not to have standing should have been determined to be the relevant tribe for the Anchorage area, not CIRI.

Plaintiffs' argument gets very close to what the court considered and decided against the plaintiffs in CINA. Directly or indirectly, the foregoing contentions have to do with the interpretation or construction of the

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[30] Id. at 13-14.

[31] Id. at 14-16.

[32] Clerk's Docket No. 40 at 12.

guidelines for prioritizing IHS applicants. In CINA, the court did deal with the priority guidelines. In both this case and CINA, the court dealt and deals with arrangements for health care services to be provided in the area of the Municipality of Anchorage, excluding Eklutna. In CINA, the court expressly observed that the contract then in dispute was not for services to be provided to a village outside the Municipality of Anchorage or for the direct benefit of some particular villages, nor for regional services. The court observed that in CINA, none of the plaintiffs were an Indian Reorganization Act council for Anchorage, none provided governmental functions within the Municipality of Anchorage, excluding Eklutna, and that no plaintiff was the traditional village council or village profit corporation for Anchorage.[33]

All of these matters were necessarily a part of the decision reached in CINA. The Native Village of Eklutna has not shown that its status as a village entity has changed in any material respect insofar as the foregoing considerations. However, none of the foregoing actually or necessarily determined the issue which plaintiff would now raise. In CINA, there really was no dispute as to what the guidelines meant, and the court simply did a straightforward factual analysis which led to a conclusion that only fourth-priority CIRI amongst all of the parties was entitled to request the award of a service contract under the ISDEA. The court concludes that the question of whether or not the IHS has not applied its own priority guidelines by failing to consider and find that Anchorage is a village for purposes of the guidelines was not actually or necessarily decided in CINA.

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[33] CINA v. Heckler, No. A84-0571-CV, Memorandum of Decision at 13 (Jan. 8, 1986).

Interpretation and Application
of Priority Guidelines

The focus of the first cause of action of plaintiffs' complaint is the defendant's use and application of a published policy of the IHS as regards "tribal clearances for Indian Self-Determination Contracts."[34] Plaintiffs contend in substance that health services must be provided at identified villages in accordance with the order of precedence set out in the guidelines.

Under the heading of "tribal clearances", the guidelines take up such matters as how a request for a contract should be presented to the IHS and who must approve such requests. In this context, the guidelines specifically provide that:

> Villages, as the smallest tribal units under the ANCSA must approve contracts which will benefit their members. The actual benefit of proposed contracts for IHS functions accrues to residents of individual villages as recipients of the health services. The IHS has determined, therefore, that the statute requires village approval, either directly or by Delegation to a tribal organization.[35]

As described above, the court dealt expressly with the interpretation and application of the above-quoted provision in CINA. In CINA, the court dealt with the government's argument that 25 U.S.C. § 450b(c) (now codified at 25 U.S.C. § 450b(*l*) (Supp. 1996)) should properly be interpreted to require approval of contracts by only those villages which are directly benefited by a grant or contract. As to Anchorage, the government had taken the position in CINA that IHS contracts for services to Natives who are residents of Anchorage did not benefit any

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[34] 46 Fed. Reg. 27,178 (May 18, 1981).

[35] Id.

particular village. The court adopted that interpretation as reasonable.[36]

To the extent that plaintiffs' arguments might be deemed to be a reiteration of the arguments made and rejected in CINA, the court holds that the plaintiffs are bound by the court's decision in CINA. The compact in question was not directed at providing benefits for any of the villages who initiated this action. On the authority of this court's earlier decision in CINA, plaintiffs' consent was not required.

In this case, plaintiffs have contended that it was inappropriate for the IHS to compact with the intervenors in a fashion which provided benefits to Natives outside the Anchorage area. The compact in question makes provision for benefits to flow to certain residents of the Matanuska Valley, an area outside the Municipality of Anchorage excluding Eklutna. Because such incidentally benefitted residents of the Matanuska Valley live in the CIRI region, but outside Eklutna (or, for that matter, outside any of the villages who would have been plaintiffs), no consent from any particular tribe other than CIRI was necessary. The court makes this ruling as a logical and necessary extension of the proposition that contract approval need be sought from an individual village only when that village is targeted by the contract or compact. Providing services to residents of the Matanuska Valley not associated with any particular village as an adjunct to a larger contract is entirely consistent with the purpose of ISDEA. This practice was followed as to the Seldovia and Ninilchik IHS compacts. It is not inconsistent with the guidelines quoted above for the IHS to make provision for benefits for non-village resident Natives through a compact with a nearby tribal organization.

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[36] CINA v. Heckler, No. A84-0571-CV, Memorandum of Decision at 14-15 (Jan. 8, 1986).

The court turns now to the question which it did not consider in CINA: Did the IHS fail to properly interpret and apply its priority guidelines when it failed to consider and find that Anchorage was or was not a village under the order of precedence guidelines?

Plaintiffs argue that the IHS order of precedence guidelines are binding upon that agency. Plaintiffs place particular emphasis upon the fact that the guidelines are repeated verbatim as a predicate to the substantive terms of the compact in question.[37] Neither the government nor the intervenors contend that the IHS was not bound to follow these guidelines in entering into the compact with CIRI/SCF. The government and intervenors contend that the guidelines were properly interpreted and applied.

Plaintiffs contend that the IHS has made no finding that Anchorage is a village. In this regard, plaintiffs are correct. The IHS made no such finding, and there is no evidence before the court to establish that the Municipality of Anchorage (excluding Eklutna) is a village for purposes of the ISDEA. Plaintiffs argue that absent the foregoing finding, the IHS has no basis for compacting with CIRI to provide health care services. This contention is baseless.

Congress, through the ISDEA, adopted a policy of "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." U.S.C. § 450a(a) (1983). The ISDEA does not define the term "communities", nor does the statute or the IHS guidelines define the term "village". Rather, the focus is upon Indian tribes, which term is defined. 25 U.S.C. § 450b(e) (Supp. 1996). "Indian tribe" is defined so as to

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[37] Memorandum in Support of Plaintiffs' Motion for Summary Judgment, Exhibit 1 at 6, Clerk's Docket No. 40.

include "any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act." Id. Subsection 450f of the ISDEA sets out the comprehensive framework within which the government contracts with tribal organizations. 25 U.S.C. § 450f (Supp. 1996). Title III of the ISDEA is an uncodified adjunct program supplementing the contract program originally established by Subsection 450f.

As to both contracts and compacts, the focus of attention is always the above-quoted statutory policy and dealings between the government and tribal organizations in furtherance of that policy. The focus is not upon geography. The area in which a contract or compact is to be carried out is an administrative detail not addressed by the statute, and only generally dealt with in the guidelines.[38] Again, plaintiffs are correct that the record before the court does not establish that Anchorage is a village; but neither the statute nor the guidelines require that the IHS compact only for the benefit of Native residents of a village.

As plaintiffs point out, the priority guidelines specify that in Alaska the IHS "will recognize as the village governing body the following entities in order of precedence[.]"[39] As the court understands plaintiffs' argument, it is upon the foregoing provision that plaintiffs build their argument that the INS cannot compact with intervenors for health care services for the Municipality of Anchorage, excluding Eklutna, absent a finding that it is a village for purposes of the ISDEA. Plaintiffs' argument seems to be that the order of precedence guidelines preclude the IHS

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[38] The guidelines deal generally with a distinction between village, regional, or sub-regional facilities and services. The guidelines do not contain any formula, rules, or other instructions by which the geographic scope of contracts or compacts is determined.

[39] 46 Fed. Reg. 27,179 (May 18, 1981).

from entering into a compact for Anchorage, excluding Eklutna, until it identifies some village governing body to request and/or approve of the compact in question.

The argument fails to observe the most basic tenet of statutory construction: laws, including regulations and policies, should be read as a whole and so as to give meaning to the whole.[40] Plaintiffs' interpretation of the priority regulations would tie the IHS in a procedural knot, rendering it impossible for the IHS to compact or contract with any tribal organization to provide needed services if the area to be served does not have a village governing body. This clearly was not Congress's intent. As has already been pointed out, the Anchorage area (excluding Eklutna) does not have a village governing body. However, and reading the priority guideline as a whole, the government plainly recognized the possibility that there would be geographic areas without a village by reason of the creation of the fourth level of priority. The order of precedence guidelines provide that where "there is no IRA Council, no traditional village council, and no village profit corporation, then the regional profit corporation will be recognized for that particular village."[41] This provision is clearly and unequivocally directed at situations such as the Municipality of Anchorage.

The Municipality of Anchorage (excluding Eklutna) is an area populated by thousands of Alaska Natives who in effect live in an unorganized Native village--one without

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[40] Title III, subsections 303(e) and (f) provide:

> (e) To the extent feasible, the Secretaries shall interpret federal laws and regulations in a manner that will facilitate the agreements authorized by this title.
>
> (f) To the extent feasible, the Secretaries shall interpret Federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by this title.

[41] 46 Fed. Reg. 27,179 (May 18, 1981).

any Native governing body. Under plaintiffs' interpretation of the guidelines, there is no village entity which can approve or deny a compact. But under the express language of the guidelines, and as this court held in CINA, the regional corporation for the Anchorage area may initiate a Native health program with the IHS. It would be senseless and wholly inconsistent with the congressional policy underlying the ISDEA For that act or the IHS guidelines to be interpreted in a fashion which would render impossible a contract or compact for providing services to a significant body of Alaska Natives.

In taking the foregoing position, the court ascribes to the IHS policy guideline use of the term "village" a meaning which subtly differs from that which the plaintiffs would attribute to the term village. Plaintiffs treat the term village as though it were some legally significant concept--a status which a group of people within some defined area must achieve as the first step in the process of compacting. Thus the plaintiffs argue that the IHS had to make a finding that Anchorage was a village, and it failed to do so. The court rejects this notion. The IHS guidelines do not employ the term village in any legalistic sense. Rather, the term "village" (when used as a noun, not an adjective) is employed in the guidelines as a means of identifying the smallest unit of Native people recognized for purposes of ISDEA contracting and compacting, which units may or may not be organized as governmental or corporate entities. Because under the ISDEA and the IHS guidelines it makes no difference insofar as entitlement to benefits whether a group of Alaska Natives residing in an area are or are not organized in some governmental or corporate fashion, there was no need or necessity for the IHS to make any finding as to whether the Municipality of Anchorage (excluding Eklutna) was or was not a village. The area is occupied by thousands of Alaska Natives. They are in need of health care services;

and, in the absence of any other recognized village organization,[42] CIRI, as the local regional profit corporation, was a proper party for the IHS to compact with. The court concludes that the defendant correctly interpreted and properly applied the IHS guidelines in compacting with the intervenors.

In consideration of the foregoing, the court concludes that defendant and the intervenors are entitled to judgment in their favor as a matter of law. Their motions are granted. The plaintiffs' motion for summary judgment is denied. The clerk of court shall enter judgment dismissing plaintiffs' complaint with prejudice.

DATED at Anchorage, Alaska, this 6 day of January, 1997.

[signature]
H. Russel Holland, Judge
District of Alaska

[42] Here the court employs the term "village" as an adjective (not a noun) just as do the guidelines in spelling out the four levels of precedence.